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Presidential Documents

Title 3—

The President

Proclamation 8701 of August 31, 2011

National Alcohol and Drug Addiction Recovery Month, 2011

By the President of the United States of America

A Proclamation

Recovering from addiction to alcohol and other drugs takes strength, faith, and commitment. Men and women in recovery showcase the power each of us holds to transform ourselves, our families, and our communities. As people share their stories and celebrate the transformative power of recovery, they also help dispel myths and stigmas surrounding substance abuse and offer hope for lifestyles free from alcohol and other drugs.

This month and throughout the year, we must promote recovery and support the growth of healthy, resilient individuals and families in the United States. Today, alcohol and other drugs threaten the future of millions of Americans. Abuse of prescription medication has reached epidemic levels, drunk and drugged driving pose significant threats to public safety, and individuals in recovery continue to confront barriers to full participation in our society. My Administration is committed to reducing substance abuse, and this year we released our 2011 National Drug Control Strategy, which supports successful, long-term recoveries through research, education, increased access to treatment, and community-based recovery support.

As a Nation, we must strive to promote second chances and recognize each individual's ability to overcome adversity. We laud and support the millions of Americans in recovery from substance abuse, their loved ones, and the communities that help them sustain recovery, while encouraging those in need to seek help. As we celebrate National Alcohol and Drug Addiction Recovery Month, we pay tribute to the transforming power of recovery, which will continue to heal individuals and communities across our country.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority invested in me by the Constitution and the laws of the United States, do hereby proclaim September 2011 as National Alcohol and Drug Addiction Recovery Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

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

[FR Doc. 2011–22869
Filed 9–2–11; 8:45 am]
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Rules and Regulations

Federal Register

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM463; Special Conditions No. 25–443–SC]

Special Conditions: Dassault Falcon Model 900 and 900EX Airplanes; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Falcon Model 900 and 900EX airplanes. These airplanes, as modified by Aviation Partners Incorporated (API), will have a novel or unusual design feature associated with the interaction of systems and structures regarding installation of an automated wing-load-alleviation system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. For the Dassault 900 and 900EX models with winglets, failure of the wing-load-alleviation system can result in a factor of safety (FS) below 1.5 as required. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 29, 2011. We must receive your comments by October 6, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM463, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM463. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Todd Martin, Airframe/Cabin Safety Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several previous instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance. However, the FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On February 14, 2007, API applied for a supplemental type certificate for winglets on the Dassault Falcon Model 900 and 900EX airplanes. These airplanes have Allied Signal engines, a maximum passenger capacity of 19, and a maximum takeoff weight of up to 49,000 lbs.

The Falcon 900 and 900EX airplanes, as modified by API, feature a wing-load-alleviation system that precludes deployment of the air brakes at certain airspeeds, thereby reducing wing loading. Special conditions have been applied on past airplane programs with similar wing-load-alleviation systems to require consideration of the effects of those systems on structures. For the Dassault 900 and 900EX models with winglets, failure of the wing-load-alleviation system can result in a FS below 1.5 as required by § 25.303. Sections 25.303 and 25.1309 do not take into account the effects of system failures on aircraft loads. A special condition is needed to account for these effects. These special conditions define the necessary requirements for assessing the effects of the air-brake wing-load-alleviation system on structures in the case of a system failure.

Type Certification Basis

Under the provisions of 14 CFR 21.101, API must show that the Falcon 900 and 900EX airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A46EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type-certification basis.'' The regulations incorporated by reference in A46EU are as follows:

14 CFR part 25 at Amendment 25–56 for the Falcon 900, at Amendment 25–77 for the Falcon 900EX, and at other

amendment levels for various commercial designations. In addition, the certification basis includes certain special conditions, exemptions, equivalent levels of safety, and later or earlier amended sections of part 25 that are not relevant to these special conditions.

In addition, if the regulations incorporated by reference do not provide adequate standards regarding the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Falcon 900 and 900EX, as modified, must also comply with some sections of part 25, as amended by Amendment 25–119.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Falcon 900 and 900EX airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Falcon 900 and 900EX airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under 14 CFR 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Dassault Falcon Model 900 and 900EX airplanes, as modified by API, will incorporate the following novel or unusual design feature:

The Airbrakes 2 inhibit system will be incorporated to retract, or prevent the deployment of, the Airbrakes 2 above 320 knots indicated airspeed (KIAS) to alleviate wing aerodynamic loading.

Applicability

As discussed above, these special conditions are applicable to the Dassault Falcon Model 900 and 900EX airplanes as modified by API. Should API apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16EU, to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only one novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Dassault Falcon Model 900 and 900EX airplanes modified by Aviation Partners Incorporated.

1. General. The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

2. System fully operative. With the system fully operative, the following apply:

a. Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in part 25 subpart C (or defined by special condition or equivalent level of safety in lieu of those specified in part 25 subpart C), taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

b. The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that do not allow it to exceed those limit conditions.

c. The airplane must meet the aeroelastic stability requirements of § 25.629.

3. System in the failure condition. For any system-failure condition not shown to be extremely improbable, the following apply:

a. At the time of occurrence. Starting from 1-g level-flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static-strength substantiation, these loads, multiplied by an appropriate FS that is related to the probability of occurrence of the failure, are ultimate loads to be considered for design. The FS is defined in Figure 1.

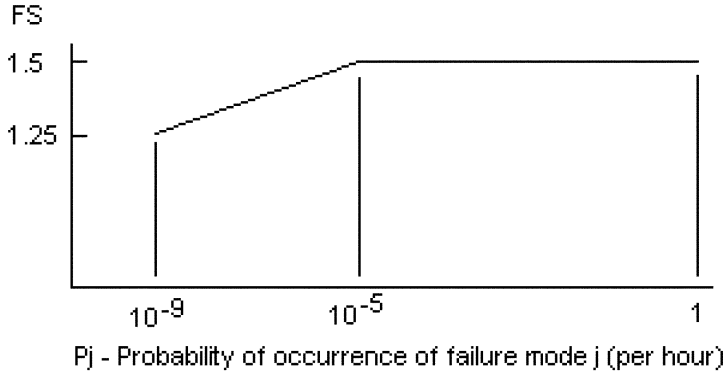

Figure 1. Factor of safety at the time of occurrence

(ii) For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in subparagraph 3(a)(i) of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond design cruising speed/mach number (V_C/M_C), freedom from aeroelastic instability must be shown to increase speeds so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced-structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

b. For the continuation of the flight. For the airplane in the system-failed state, and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions (or defined by special condition or equivalent level of safety in lieu of the following conditions) at speeds up to V_C/M_C, or the speed limitation prescribed for the remainder of the flight, must be determined:

(1) The limit-symmetrical-maneuvering conditions specified in §§ 25.331 and 25.345.

(2) The limit-gust-and-turbulence conditions specified in §§ 25.341 and 25.345.

(3) The limit-rolling conditions specified in § 25.349.

(4) The limit-unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

(5) The limit-yaw-maneuvering conditions specified in § 25.351.

(6) The limit-ground-loading conditions specified in §§ 25.473 and 25.491.

(ii) For static-strength substantiation, each part of the structure must be able to withstand the loads in paragraph 3(b)(i) of these special conditions multiplied by a FS depending on the probability of being in this failure state. The FS is defined in Figure 2.

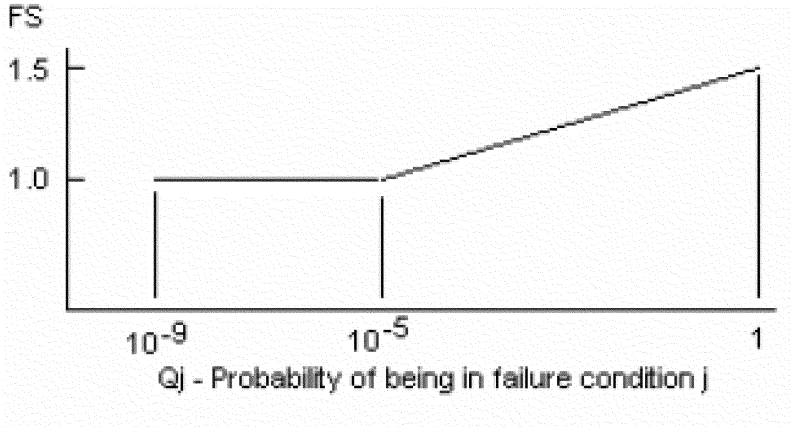

Figure 2. Factor of safety for continuation of flight

$Qj = (Tj)(Pj)$

Where:

Tj = Average time spent in failure condition j (in hours)

Pj = Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then a 1.5 FS must be applied to all limit-load conditions specified in part 25 subpart C.

(iii) For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph 3(b)(ii) of these special condition. For pressurized cabins, these loads must be combined with the normal operating differential pressure. If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(iv) Freedom from aeroelastic instability must be shown up to a speed

determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

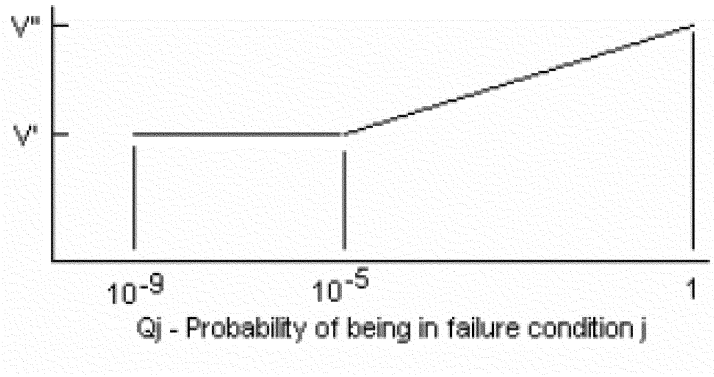

Figure 3. Clearance speed

V′ = Clearance speed as defined by Sec. 25.629(b)(2).

V″ = Clearance speed as defined by Sec. 25.629(b)(1).

Qj = (Tj)(Pj)

Where:

Tj = Average time spent in failure condition j (in hours)

Pj = Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(v) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3, above, for any probable system-failure condition combined with any damage required or selected for investigation by § 25.571(b). Consideration of certain failure conditions may be required by other sections of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

4. Failure indications. For system-failure detection and indication, the following apply:

a. The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or that significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection-and-indication systems to achieve the objective of this requirement. These certification-maintenance requirements must be limited to components that are not readily detectable by normal detection-and-indication systems and where service history shows that inspections provide an adequate level of safety.

b. The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in an FS between the airplane strength and the loads of part 25 subpart C below 1.25, or flutter margins below V″, must be signaled to the flightcrew during flight.

5. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system-failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special condition must be met, including the provisions of paragraph 2 in these special conditions for the dispatched condition, and paragraph 3 for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition, and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state, and then subsequently encountering limit-load conditions, is extremely improbable. No reduction in these safety margins is allowed if the subsequent system-failure rate is greater than $1E^{-3}$ per hour.

Issued in Renton, Washington, on August 29, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22631 Filed 9–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1270; Directorate Identifier 2001–NE–50–AD; Amendment 39–16788; AD 2005–25–10R1]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 Propeller Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for the products listed above. That AD currently requires initial and repetitive ultrasonic inspections of propeller hubs, part number (P/N) 660709201. This new AD requires introducing a new hub assembly P/N as an optional terminating action to the repetitive hub inspections. This AD was prompted by the need to

introduce an optional terminating action for the repetitive inspections. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

DATES: This AD is effective October 11, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 11, 2011.

ADDRESSES: For service information identified in this AD, contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; phone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7761; fax: 781–238–7170; e-mail: *michael.schwetz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2005–25–10, Amendment 39–14403 (70 FR 73364, December 12, 2005). That AD applies to the specified products. The NPRM published in the **Federal Register** on April 18, 2011 (76 FR 21675). That NPRM proposed to continue to require initial and repetitive ultrasonic inspections of propeller hubs, P/N 660709201. That NPRM also proposed to introduce as an optional terminating action for the initial and repetitive ultrasonic inspections of that AD, replacement of propeller hub P/N 660709201 with a new propeller hub, P/N 660717226.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 21675, April 18, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 132 propellers installed on airplanes of U.S. registry. We also estimate that it will take about 0.5 work-hour per propeller to perform the inspection and about 1 hour to replace a propeller hub. The average labor rate is $85 per work-hour. Required parts will cost about $19,500 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $2,590,830.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2005–25–10, Amendment 39–14403 (70 FR 73364, December 12, 2005), and adding the following new AD:

2005–25–10R1 Dowty Propellers (formerly Dowty Aerospace; Dowty Rotol Limited; and Dowty Rotol): Amendment 39–16788 ; Docket No. FAA–2010–1270; Directorate Identifier 2001–NE–50–AD.

Effective Date

(a) This airworthiness directive (AD) is effective October 11, 2011.

Affected ADs

(b) This AD revises AD 2005–25–10, Amendment 39–14403 (70 FR 73364, December 12, 2005).

Applicability

(c) This AD applies to Dowty Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies with propeller hubs, part number (P/N) 660709201.

Unsafe Condition

(d) This AD was prompted by the need to introduce an optional terminating action for the repetitive inspections. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Initial Ultrasonic Inspections

(f) Perform an initial ultrasonic inspection of the rear wall of the rear half of the

propeller hub for cracks within the compliance time specified in Table 1 of this AD. Use Appendix A or Appendix D of the applicable Dowty Alert Service Bulletin (SB) listed in Table 1 of this AD to do the inspection.

TABLE 1—APPLICABLE ALERT SB FOR PROPELLER TYPE

Propeller assembly type	Initial inspection within . . .	Repeat inspection within . . .	Applicable SB
(1) R334/4–82–F/13	10 flight hours (FH) time-in-service (TIS) after the effective date of this AD.	300 FH time-since-last-inspection (TSLI) or 300 flight cycles-since-last inspection, whichever occurs sooner.	Alert SB No. 61–1119, Revision 5, dated July 1, 2009.
(2) R321/4–82–F/8 ..	50 FH TIS after the effective date of this AD.	1,000 FH TSLI	Alert SB No. 61–A1125, Revision 2, dated August 25, 2010.
(3) R324/4–82–F/9 ..	50 FH TIS after the effective date of this AD.	1,000 FH TSLI	Alert SB No. 61–A1126, Revision 2, dated August 25, 2010.
(4) R333/4–82–F/12	50 FH TIS after the effective date of this AD.	1,000 FH TSLI	Alert SB No. 61–A1124, Revision 2, dated August 25, 2010.

(g) For hubs and propellers in storage, perform an initial ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks, before placing in service. Use Appendix A or Appendix D of the applicable Dowty Alert SB listed in Table 1 of this AD to do the inspection.

Initial Inspection—Previous Credit

(h) Propeller hubs, P/N 660709201, that previously passed inspection using Dowty Alert SBs listed in Table 1 of this AD or an earlier issue of those SBs, have satisfied the initial inspection requirements of this AD. However, you must comply with the repetitive inspection requirements found in this AD.

Repetitive Ultrasonic Inspections

(i) Thereafter, perform a repetitive ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks within the compliance time specified in Table 1 of this AD. Use Appendix A or Appendix D of the applicable Dowty Alert SB listed in Table 1 of this AD to do the inspection.

Optional Terminating Action

(j) As optional terminating action for the repetitive inspections required by this AD, replace propeller hub, P/N 660709201, with a new propeller hub, P/N 660717226.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, Boston Certification Office, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) For more information about this AD, contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7761; fax: 781–238–7170; e-mail: *michael.schwetz@faa.gov.*

(m) European Aviation Safety Agency 2010–0196R1, dated November 12, 2010, pertains to the subject of this AD.

Material Incorporated by Reference (IBR)

(n) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Dowty Propellers Alert SB No. 61–1119, Revision 5, dated July 1, 2009, approved for IBR as of October 11, 2011.

(2) Dowty Propellers Alert SB No. 61–A1124, Revision 2, dated August 25, 2010, approved for IBR as of October 11, 2011.

(3) Dowty Propellers Alert SB No. 61–A1125, Revision 2, dated August 25, 2010, approved for IBR as of October 11, 2011.

(4) Dowty Propellers Alert SB No. 61–A1126, Revision 2, dated August 25, 2010, approved for IBR as of October 11, 2011.

(5) For service information identified in this AD, contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; phone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001.

(6) You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(7) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on August 15, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–22566 Filed 9–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 745, and 748

[Docket No. 110802457–1467–01]

RIN 0694–AF18

Export Administration Regulations: Netherlands Antilles, Curaçao, Sint Maarten and Timor-Leste

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Netherlands Antilles dissolved on October 10, 2010. This rule removes the Netherlands Antilles from all places where it is mentioned in the Export Administration Regulations (EAR), *e.g.,* the Commerce Country Chart, the Country Groups, and License Exception APP. Curaçao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became semi-autonomous entities within the Kingdom of the Netherlands. Therefore, Curaçao and Sint Maarten are added to the Commerce Country Chart.

The territories and dependencies of a country are treated as the parent country under the EAR. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands. Therefore, these dependencies are treated like the Netherlands and will not be listed on the Commerce Country Chart.

This rule also revises the name ''East Timor'' to read ''Timor-Leste'' throughout the EAR, because this is the proper name of the country.

DATES: *Effective Date:* This rule is effective: September 6, 2011.

FOR FURTHER INFORMATION CONTACT: For questions contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by e-mail: *Sharron.Cook@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Netherlands Antilles, consisting of Curacao, Sint Maarten, Bonaire, Saba, and Sint Eustatius, dissolved on October 10, 2010. Curaçao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became semi-autonomous entities within the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands. In addition, BIS has recognized that the country previously referred to in the Commerce Country Chart as ''East Timor'' should instead be referred to by its proper name, which is ''Timor-Leste.''

Revisions to the Export Administration Regulations (EAR)

This rule corrects the third sentence in Section 738.3 paragraph (b) removing the phrase ''territory, possession, or department'' and adding in its place ''territory, possession, dependency or department'' in two places. The Commerce Country Chart (Supplement No. 1 to part 738) generally does not list territories, possessions, dependencies or departments of countries, because they are treated the same as the parent country for export control purposes. The State Department has a Web site that lists ''Dependencies and Areas of Special Sovereignty'' at *http://www.state.gov/s/inr/rls/10543.htm.*

This rule removes the Netherlands Antilles from the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR), because it has dissolved and all the territories and dependencies previously under the Netherlands Antilles, except Curaçao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin), are now treated in the same manner as the parent country—the Netherlands. Curaçao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) became semi-autonomous entities within the Kingdom of the Netherlands. Therefore, Curaçao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) are added to the Commerce Country Chart with license requirements (Xs) that are the same as the license requirements were for the Netherlands Antilles. In addition, this rule replaces the country name of ''East Timor'' with the proper name of ''Timor-Leste'' in the Commerce Country Chart and moves the resulting row to its appropriate alphabetic location.

This rule also removes the Netherlands Antilles from the list of countries in Computer Tier 1 of License Exception APP in Section 740.7(c)(1). There is no change in eligibility for exports or reexports to Bonaire, Saba, and Sint Eustatius of computers under License Exception APP, because the Netherlands is already in Computer Tier 1. However, there is expanded eligibility for exports and reexports to Bonaire, Saba, and Sint Eustatius of computer technology and software under License Exception APP, because the Netherlands is listed in Section 740.7(c)(3)(i) of License Exception APP. Curaçao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) are added to Computer Tier 1 of License Exception APP. In addition, this rule replaces the country name of ''East Timor'' with the proper name of ''Timor-Leste'' in Section 740.7(c)(1) and moves it to its new alphabetic location in Computer Tier 1.

This rule also makes changes to the Country Groups in Supplement No. 1 to part 740. A country may appear in one or more of the Country Groups, or not at all, depending upon, among other things, its affiliation or membership in a multilateral export control regime. This rule removes the Netherlands Antilles from the list of countries in Country Group B of the Country Groups (Supplement No. 1 to part 740), and adds Curaçao and Sint Maarten (the Dutch two-fifths of the island of Saint Martin) to Country Group B. The Netherlands is listed in Country Group B, and therefore this revision does not alter the export controls or exemptions that apply to Bonaire, Saba, and Sint Eustatius. However, the Netherlands is also listed in Country Group A and therefore all exemptions, *e.g.,* License Exceptions APR and GOV, that apply to the Netherlands now apply to its dependencies, territories and possessions. Additionally, this rule removes ''East Timor'' and adds in its place ''Timor-Leste'' in alphabetic order in the list of countries of Country Group B.

This rule revises Supplement No. 2 to part 745 ''States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and use of Chemical Weapons and on Their Destruction'' by removing ''Timor Leste (East Timor)'' and adding in its place ''Timor-Leste''. This rule also removes ''Netherlands **'' and adds in its place ''Netherlands (Kingdom of the) **'' for clarification purposes and because of the recent changes to these entities. In addition, this rule removes the phrase ''the Netherlands includes Aruba and the Netherlands Antilles.'' in the two asterisk footnote and adds in its place ''the Netherlands (Kingdom of) includes the following dependencies: Aruba, Curaçao, and Sint Maarten (the Dutch two-fifths of the island of Saint Martin).''

This rule revises paragraph (a)(1) of Section 748.9 ''Support documents for license applications'' by removing ''Netherlands Antilles'' and adding ''Leeward Antilles''. This change will maintain the support document exemption for Aruba, Bonaire and Curaçao, and add a support document exemption for the Venezuelan archipelago. The Leeward Antilles consists of:

ABC islands:
- Aruba (Kingdom of the Netherlands),
- Bonaire (Kingdom of the Netherlands),
- Curaçao (Kingdom of the Netherlands).

Venezuelan archipelago:
- Las Aves,
- Los Roques,
- La Orchilla,
- La Blanquilla,
- Los Hermanos,
- Los Testigos.

The support documentation exemption for Saba, Sint Eustatius and Sint Maarten will continue as they are part of the Leeward Islands, which is already listed in Section 748.9(a)(1).

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, 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, 2010, 75 FR 50681 (August 16, 2010) has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*).

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''not significant regulatory action,'' under section 3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be

subject to a penalty for failure to comply with a collection of information, subject to the requirements of Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves three collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' and carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. The second of the collections has been approved by OMB under control number 0694–0017, ''International Import Certificate,'' and carries a burden hour estimate of 15 minutes for a manual or electronic submission. The last of the collections has been approved by OMB under control number 0694–0021, ''Statement by Ultimate Consignee and Purchaser,'' and carries a burden hour estimate of 15 minutes for a manual or electronic submission Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by e-mail at *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6622, Washington, DC 20230. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

3. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because it is unnecessary. The revisions made by this rule are administrative in nature and minimally affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Notice of proposed rulemaking and opportunity for public comment are not required for this rule under the Administrative Procedure Act or by any other law, and the analytical requirements of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Parts 740 and 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 745, and 748 of the Export Administration Regulations (15 CFR Parts 730 through 774) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

§ 738.3 [Amended]

■ 2. Section 738.3 is amended by removing the phrase ''territory, possession, or department'' and adding in its place ''territory, possession, dependency or department'' in two places in the third sentence of paragraph (b).

■ 3. Supplement No. 1 to part 738 is amended by:

■ a. Adding in alphabetic order rows for ''Curaçao'' and ''Sint Maarten (the Dutch two-fifths of the island of Saint Martin)'', as set forth below:

■ b. Removing the row for ''Netherlands Antilles''; and

■ c. Removing the country name ''Timor East'' and adding (in alphabetic order) in its place ''Timor-Leste''

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

REASON FOR CONTROL

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
* *			*		*			*			*		*			
Curaçao	X	X	.....	X	.....	X	X	X	X	X	.....	X	.....	X	.....	.....
* *			*		*			*			*		*			
Sint Maarten (the Dutch two-fifths of the island of Saint Martin)	X	X	.....	X	.....	X	X	X	X	X	.....	X	.....	X	.....	.....
* *			*		*			*			*		*			

PART 740—[AMENDED]

■ 4. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

§ 740.7 [Amended]

■ 5. Section 740.7 is amended by:

■ a. Removing ''Netherlands Antilles'' from the list of countries in paragraph (c)(1);

■ b. Adding in alphabetic order ''Curaçao'' and ''Sint Maarten (the Dutch two-fifths of the island of Saint Martin)'' to paragraph (c)(1);
■ c. Removing ''East Timor'' and adding ''Timor-Leste'' in alphabetic order to paragraph (c)(1).

Supplement No. 1 to Part 740 [Amended]

■ 6. Supplement No. 1 to part 740 is amended by:
■ a. Removing ''Netherlands Antilles'' from the list of countries in Country Group B;
■ b. Adding in alphabetic order ''Curaçao'' and ''Sint Maarten (the Dutch two-fifths of the island of Saint Martin)'' to the list of countries in Country Group B; and
■ c. Removing ''East Timor'' and adding ''Timor-Leste'' in alphabetic order in the list of countries of Country Group B.

PART 745—[AMENDED]

■ 7. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

Supplement No. 2 to Part 745 [Amended]

■ 8. Supplement No. 2 to part 745 is amended by:
■ a. Removing ''Netherlands * * *'' and adding in its place ''Netherlands (Kingdom of the) * * *''
■ b. Removing ''Timor Leste (East Timor)'' and adding in its place ''Timor-Leste'';
■ c. Removing the phrase ''the Netherlands includes Aruba and the Netherlands Antilles.'' in the two asterisk footnote and adding in its place ''the Netherlands (Kingdom of) includes: Aruba, Curaçao, and Sint Maarten (the Dutch two-fifths of the island of Saint Martin).''

PART 748—[AMENDED]

■ 9. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

§ 748.9 [Amended]

■ 10. Section 748.9 is amended in the list of countries in paragraph (a)(1) by removing ''Netherlands Antilles'' and adding in alphabetical order ''Leeward Antilles''.

Dated: August 30, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–22678 Filed 9–2–11; 8:45 am]

BILLING CODE 3510–33–P

POSTAL SERVICE

39 CFR Part 111

Post Office (PO) Box Fee Groups for Merged Locations

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 508.4 to allow Post Office Box™ (PO Box™) fee groups to be merged due to Post Office™ mergers and to have the ability to change a fee group more than one higher or lower level at a time in limited circumstances.

DATES: *Effective Date:* November 7, 2011.

FOR FURTHER INFORMATION CONTACT: Nan McKenzie at 202–268–3089, David Rubin at 202–268–2986, or Richard Daigle at 202–268–6392.

SUPPLEMENTARY INFORMATION: On July 12, 2011, the **Federal Register** published our proposed rule (76 FR 40849–40850), requesting comments to allow the Postal Service to change the fee group assignment for PO Boxes by more than one level (higher or lower) when boxes move to a different ZIP Code™ location because of a merger of two or more ZIP Code locations into a single location.

Current mailing standards limit changes for a PO Box fee group assignment for a 5-digit ZIP Code to one level higher or lower, and only once per calendar year. Absent this change, where a box section is merged with a location whose box section is more than one fee group level different, the location would need to charge two different fee groups. This final rule will allow the fee group of the merged (receiving) location to apply to all customers receiving PO Box service in that location. This rule does not affect the standards for Group E PO Box eligibility.

Also, prior to any such merger, existing PO Box customers will have the option to renew their box rentals at their current fees for another period, even if the resulting fee will have been paid for more than one year in advance.

No comments were received on the proposed rule.

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

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

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

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

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

* * * * *

500 Additional Mailing Services

* * * * *

508 Recipient Services

* * * * *

4.0 Post Office Box Service

* * * * *

4.5 Basis of Fees and Payment

* * * * *

4.5.3 Fee Changes

[*Revise 4.5.3 as follows:*]

A change in Post Office Box service fees applicable to a 5-digit ZIP Code can arise from a general fee change. In addition, the USPS may assign a fee group to a new ZIP Code, may reassign one or more 5-digit ZIP Codes to the next higher or lower fee group if fee group assignments were in error, or may regroup 5-digit ZIP Codes. Except when boxes from two or more ZIP Codes are being merged into one location, a ZIP Code may be moved only into the next higher or lower fee group. If boxes in two or more ZIP Codes merge, the fee group will be that of the receiving location, even if one of the fee groups changes by more than one level. No ZIP Code may be moved into a different fee group more than once a calendar year. A change in Post Office Box service fees takes effect on the date of the action that caused the change unless an official announcement specifies another date. If Post Office Box service fees are

increased, no customer must pay the new price until the end of the current service period, and no retroactive adjustment will be made for a payment received before the date of the change. The fee charged is that in effect on the date of payment.

4.5.4 Payment

[Revise the introductory text of 4.5.4 as follows:]

All fees for Post Office Box service are for 6- or 12-month prepaid periods, except as noted under 4.5.6, 4.5.7, and 4.5.10. The general rule is that a fee may be paid up to one year in advance; however, when boxes from two or more ZIP Codes are being merged into one location, a customer has the option, prior to the merger, to renew at the current fee for another rental period, even when this results in a fee being paid more than one year in advance. Customers may pay the fee using any of the following methods:

* * * * *

4.5.5 Payment Period

[Revise 4.5.5 as follows:]

Except under 4.5.7, the beginning date for a Post Office Box fee payment period is determined by the approval date of the application. The period begins on the first day of the same month if the application is approved on or before the 15th of the month, or the next month if approved after the 15th of the month. Fees for service renewal may be paid any time during the last 30 days of the service period, except under 4.5.4, but no later than the last day of the service period.

* * * * *

4.5.8 Change of Payment Period

[Revise 4.5.8 as follows:]

Except for customers at Post Offices subject to 4.5.7, a Post Office Box customer of record may change the payment period by submitting a new application noting the month to be used as the start of the revised payment period. The date selected must be before the end of the current payment period. The unused fee for the period being discontinued may be refunded under 4.7, and the fee for the new payment period must be fully paid in advance. Except when boxes from two or more ZIP Codes are being merged into one location, a change of payment period date must not be used to circumvent a change in box fees.

* * * * *

4.6 Fee Group Assignments

4.6.1 Regular Fee Groups

[Revise 4.6.1 as follows:]

For Post Office Box fee groups, see Notice 123—Price List. Post Office Boxes are assigned to fee groups and classified as competitive or market dominant based upon the Post Office location. Local Post Offices can provide information about fees for a particular ZIP Code.

* * * * *

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

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–22628 Filed 9–2–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

DEPARTMENT OF TRANSPORTATION

National Highway and Traffic Safety Administration

[EPA–HQ–OAR–2009–0865; FRL–9459–8; NHTSA–2010–0087]

RIN 2060–AQ09; RIN 2127–AK73

Revisions and Additions to Motor Vehicle Fuel Economy Label; Correction

AGENCY: Environmental Protection Agency, National Highway and Traffic Safety Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency and the Department of Transportation published a final rule regarding labeling of cars and trucks with fuel economy and environmental information in the **Federal Register** on July 6, 2011 (76 FR 39478). An error in the amendatory instruction for § 86.1867–12 inadvertently calls for the removal of paragraph (a)(3)(iv)(A) of that section. This rule revises the amendatory language for consistency with the regulatory text.

DATES: Effective on September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Roberts French, Office of Transportation and Air Quality, Compliance and Innovative Strategies Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; Phone: (734) 214–4380; E-mail: *french.roberts@epa.gov.*

SUPPLEMENTARY INFORMATION: In rule FR Doc. #2011–14291 published on July 6, 2011, (76 FR 39478) make the following correction. On page 39523, in the first column, the amendatory language for instruction 13 is revised to read as follows:

§ 86.1867–12 [Corrected]

13. Section 86.1867–12 is amended by removing and reserving paragraph (a)(1)(iii)(A), by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(iv)(A), (a)(3)(iv)(F), (a)(3)(vi), (a)(4), (b)(2), and (e)(4)(ii) to read as follows:

Dated: August 26, 2011.

Margo T. Oge,

Director, Office of Transportation and Air Quality, Environmental Protection Agency.

Dated: August 29, 2011.

Ronald Medford,

Deputy Administrator, National Highway Traffic Safety Administration, Department of Transportation.

[FR Doc. 2011–22664 Filed 9–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 704, 710, and 711

[EPA–HQ–OPPT–2009–0187; FRL–8872–9]

RIN 2070–AJ43

TSCA Inventory Update Reporting Modifications; Chemical Data Reporting

Correction

In rule document 2011–19922, appearing on pages 50816–50879 in the issue of Tuesday, August 16, 2011, a technical error resulted in incorrect section numbers appearing throughout the regulatory text. The regulatory text is being republished below in its entirety.

PARTS 704, 710 and 711—[CORRECTED]

Beginning on page 50558, in the third column, in the ninth line from the bottom, the regulatory text should read as set forth below:

Therefore, 40 CFR chapter I is amended as follows:

PART 704—[AMENDED]

■ 1. The authority citation for part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 704.3 [Amended]

■ 2. In § 14;704.3, remove the phrase ''(as defined in 19 CFR 1.11)'' in paragraph (1)(ii) of the definition *importer.*

PART 710—COMPILATION OF THE TSCA CHEMICAL SUBSTANCE INVENTORY

■ 3. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 4. Revise the heading for part 710 to read as set forth above.

■ 5. Remove the heading ''Subpart A—General Provisions.''

■ 6. Revise paragraph (b) of § 14;710.1 to read as follows:

§ 710.1 Scope and compliance.

* * * * *

(b) This part applies to the activities associated with the compilation of the TSCA Chemical Substance Inventory (TSCA Inventory) and the update of information on a subset of the chemical substances included on the TSCA Inventory.

* * * * *

■ 7. Section 710.3 is amended as follows:

■ i. Revise the introductory text.

■ ii. Remove the phrase ''(as defined in 19 CFR 1.11)'' in paragraph (2) of the definition *importer*.

■ iii. Remove the definition *non-isolated intermediate*.

The revision reads as follows:

§ 710.3 Definitions.

For purposes of this part:

* * * * *

Subpart B (§§ 710.23–710.39) [Removed]

■ 8. Remove subpart B, consisting of §§ 710.23–710.39.

Subpart C (§§ 710.43–710.59) [Removed]

■ 9. Remove subpart C, consisting of §§ 710.43–710.59.

■ 10. Add new part 711 to subchapter R to read as follows:

PART 711—TSCA CHEMICAL DATA REPORTING REQUIREMENTS

Sec.

711.1 Scope and compliance.
711.3 Definitions.
711.5 Chemical substances for which information must be reported.
711.6 Chemical substances for which information is not required.
711.8 Persons who must report.
711.9 Persons not subject to this part.
711.10 Activities for which reporting is not required.
711.15 Reporting information to EPA.
711.20 When to report.
711.22 Duplicative reporting.
711.25 Recordkeeping requirements.
711.30 Confidentiality claims.
711.35 Electronic filing.

Authority: 15 U.S.C. 2607(a).

§ 711.1 Scope and compliance.

(a) This part specifies reporting and recordkeeping procedures under section 8(a) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2607(a)) for certain manufacturers (including importers) of chemical substances. Section 8(a) of TSCA authorizes the EPA Administrator to require reporting of information necessary for administration of TSCA, including issuing regulations for the purpose of compiling and keeping current the TSCA Chemical Substance Inventory (TSCA Inventory) as required by TSCA section 8(b). In accordance with TSCA section 8(b), EPA amends the TSCA Inventory to include new chemical substances manufactured (including imported) in the United States and reported under TSCA section 5(a)(1). EPA also revises the categories of chemical substances and makes other amendments as appropriate.

(b) This part applies to the activities associated with the periodic update of information on a subset of the chemical substances included on the TSCA Inventory.

(c) Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under this part. In addition, TSCA section 15(3) makes it unlawful for any person to fail to keep, and permit access to, records required by this part. Section 16 of TSCA provides that any person who violates a provision of TSCA section 15 is liable to the United States for a civil penalty and may be criminally prosecuted. Pursuant to TSCA section 17, the Federal Government may seek judicial relief to compel submission of TSCA section 8(a) information and to otherwise restrain any violation of TSCA section 15. (EPA does not intend to concentrate its enforcement efforts on insignificant clerical errors in reporting.)

(d) Each person who reports under this part must maintain records that document information reported under this part and, in accordance with TSCA, permit access to, and the copying of, such records by EPA officials.

§ 711.3 Definitions.

The definitions in this section and the definitions in TSCA section 3 apply to this part. In addition, the definitions in 40 CFR 704.3 also apply to this part, except the definitions *manufacture* and *manufacturer* in 40 CFR 704.3.

CDX or *Central Data Exchange* means EPA's centralized electronic document receiving system, or its successors.

Commercial use means the use of a chemical substance or a mixture containing a chemical substance (including as part of an article) in a commercial enterprise providing saleable goods or services.

Consumer use means the use of a chemical substance or a mixture containing a chemical substance (including as part of an article) when sold to or made available to consumers for their use.

e-CDRweb means the electronic, web-based tool provided by EPA for the completion and submission of the CDR data.

Industrial function means the intended physical or chemical characteristic for which a chemical substance or mixture is consumed as a reactant; incorporated into a formulation, mixture, reaction product, or article; repackaged; or used.

Industrial use means use at a site at which one or more chemical substances or mixtures are manufactured (including imported) or processed.

Intended for use by children means the chemical substance or mixture is used in or on a product that is specifically intended for use by children age 14 or younger. A chemical substance or mixture is intended for use by children when the submitter answers ''yes'' to at least one of the following questions for the product into which the submitter's chemical substance or mixture is incorporated:

(1) Is the product commonly recognized (i.e., by a reasonable person) as being intended for children age 14 or younger?

(2) Does the manufacturer of the product state through product labeling or other written materials that the product is intended for or will be used by children age 14 or younger?

(3) Is the advertising, promotion, or marketing of the product aimed at children age 14 or younger?

Manufacture means to manufacture, produce, or import, for commercial purposes. Manufacture includes the extraction, for commercial purposes, of a component chemical substance from a previously existing chemical substance or complex combination of chemical substances. When a chemical substance, manufactured other than by import, is:

(1) Produced exclusively for another person who contracts for such production, and

(2) That other person specifies the identity of the chemical substance and controls the total amount produced and the basic technology for the plant process, then that chemical substance is co-manufactured by the producing

manufacturer and the person contracting for such production.

Manufacturer means a person who manufactures a chemical substance.

Master Inventory File means EPA's comprehensive list of chemical substances which constitutes the TSCA Inventory compiled under TSCA section 8(b). It includes chemical substances reported under 40 CFR part 710 and substances reported under 40 CFR part 720 for which a Notice of Commencement of Manufacture or Import has been received under 40 CFR 720.120.

Principal reporting year means the latest complete calendar year preceding the submission period.

Reasonably likely to be exposed means an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than not to occur. Such exposures would normally include, but would not be limited to, activities such as charging reactor vessels, drumming, bulk loading, cleaning equipment, maintenance operations, materials handling and transfers, and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact, absorption, etc.), but excludes accidental or theoretical exposures.

Repackaging means the physical transfer of a chemical substance or mixture, as is, from one container to another container or containers in preparation for distribution of the chemical substance or mixture in commerce.

Reportable chemical substance means a chemical substance described in § 711.5.

Site means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. More than one manufacturing plant may be located on a single site.

(1) For chemical substances manufactured under contract, i.e., by a toll manufacturer, the site is the location where the chemical substance is physically manufactured.

(2) The site for an importer who imports a chemical substance described in § 711.5 is the U.S. site of the operating unit within the person's organization that is directly responsible for importing the chemical substance. The import site, in some cases, may be the organization's headquarters in the United States. If there is no such operating unit or headquarters in the United States, the site address for the importer is the U.S. address of an agent acting on behalf of the importer who is authorized to accept service of process for the importer.

(3) For portable manufacturing units sent to different locations from a single distribution center, the distribution center shall be considered the site.

Site-limited means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a chemical substance or as part of a mixture or article outside the site. Imported chemical substances are never site-limited. Although a site-limited chemical substance is not distributed for commercial purposes outside the site at which it is manufactured and processed, the chemical substance is considered to have been manufactured and processed for commercial purposes.

Submission period means the period in which the manufacturing, processing, and use data are submitted to EPA.

U.S. parent company means the highest level company, located in the United States, that directly owns at least 50% of the voting stock of the manufacturer.

Use means any utilization of a chemical substance or mixture that is not otherwise covered by the terms manufacture or process. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging of the chemical substance or mixture occurs does not constitute use or processing of the chemical substance or mixture.

§ 711.5 Chemical substances for which information must be reported.

Any chemical substance that is in the Master Inventory File at the beginning of a submission period described in § 711.20, unless the chemical substance is specifically excluded by § 711.6.

§ 711.6 Chemical substances for which information is not required.

The following groups or categories of chemical substances are exempted from some or all of the reporting requirements of this part, with the following exception: A chemical substance described in paragraph (a)(1), (a)(2), or (a)(4), or (b) of this section is not exempted from any of the reporting requirements of this part if that chemical substance is the subject of a rule proposed or promulgated under TSCA section 4, 5(a)(2), 5(b)(4), or 6, or is the subject of an enforceable consent agreement (ECA) developed under the procedures of 40 CFR part 790, or is the subject of an order issued under TSCA section 5(e) or 5(f), or is the subject of relief that has been granted under a civil action under TSCA section 5 or 7.

(a) *Full exemptions.* The following categories of chemical substances are exempted from the reporting requirements of this part.

(1) *Polymers*—(i) Any chemical substance described with the word fragments ''*polym,'' ''*alkyd,'' or ''*oxylated'' in the Chemical Abstracts (CA) Index Name in the Master Inventory File, where the asterisk (*) in the listed word fragments indicates that any sets of characters may precede, or follow, the character string defined.

(ii) Any chemical substance that is identified in the Master Inventory File as an enzyme, lignin, a polysaccharide (cellulose, gum, starch), a protein (albumin, casein, gelatin, gluten, hemoglobin), rubber, siloxane and silicone, or silsesquioxane.

(iii) This exclusion does not apply to a polymeric substance that has been depolymerized, hydrolyzed, or otherwise chemically modified, except in cases where the intended product of this reaction is totally polymeric in structure.

(2) *Microorganisms.* Any combination of chemical substances that is a living organism, and that meets the definition of *microorganism* at 40 CFR 725.3. Any chemical substance produced from a living microorganism is reportable under this part unless otherwise excluded.

(3) *Naturally occurring chemical substances.* Any naturally occurring chemical substance, as described in 40 CFR 710.4(b). The applicability of this exclusion is determined in each case by the specific activities of the person who manufactures the chemical substance in question. Some chemical substances can be manufactured both as described in 40 CFR 710.4(b) and by means other than those described in 40 CFR 710.4(b). If a person described in § 711.8 manufactures a chemical substance by means other than those described in 40 CFR 710.4(b), the person must report regardless of whether the chemical substance also could have been produced as described in 40 CFR 710.4(b). Any chemical substance that is produced from such a naturally occurring chemical substance described in 40 CFR 710.4(b) is reportable unless otherwise excluded.

(4) *Certain forms of natural gas and water.* Chemical substances with the following Chemical Abstracts Service Registry Number (CASRN): CASRN 7732–18–5, water; CASRN 8006–14–2, natural gas; CASRN 8006–61–9, gasoline, natural; CASRN 64741–48–6, natural gas (petroleum), raw liq. mix; CASRN 68410–63–9, natural gas, dried; CASRN 68425–31–0, gasoline (natural

gas), natural; and CASRN 68919–39–1, natural gas condensates.

(b) *Partial exemptions.* The following groups of chemical substances are partially exempted from the reporting requirements of this part (*i.e.,* the information described in § 711.15(b)(4) need not be reported for these chemical substances). Such chemical substances are not excluded from the other reporting requirements under this part.

(1) *Petroleum process streams.* EPA has designated the chemical substances listed in Table 1 of this paragraph by CASRN, as partially exempt from reporting under the IUR.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING

CASRN	Product
8002–05–9	Petroleum.
8002–74–2	Paraffin waxes and hydrocarbon waxes.
8006–20–0	Fuel gases, low and medium B.T.U.
8008–20–6	Kerosine (petroleum).
8009–03–8	Petrolatum.
8012–95–1	Paraffin oils.
8030–30–6	Naphtha.
8032–32–4	Ligroine.
8042–47–5	White mineral oil (petroleum).
8052–41–3	Stoddard solvent.
8052–42–4	Asphalt.
61789–60–4	Pitch.
63231–60–7	Paraffin waxes and hydrocarbon waxes, microcryst.
64741–41–9	Naphtha (petroleum), heavy straight-run.
64741–42–0	Naphtha (petroleum), full-range straight-run.
64741–43–1	Gas oils (petroleum), straight-run.
64741–44–2	Distillates (petroleum), straight-run middle.
64741–45–3	Residues (petroleum), atm. tower.
64741–46–4	Naphtha (petroleum), light straight-run.
64741–47–5	Natural gas condensates (petroleum).
64741–49–7	Condensates (petroleum), vacuum tower.
64741–50–0	Distillates (petroleum), light paraffinic.
64741–51–1	Distillates (petroleum), heavy paraffinic.
64741–52–2	Distillates (petroleum), light naphthenic.
64741–53–3	Distillates (petroleum), heavy naphthenic.
64741–54–4	Naphtha (petroleum), heavy catalytic cracked.
64741–55–5	Naphtha (petroleum), light catalytic cracked.
64741–56–6	Residues (petroleum), vacuum.
64741–57–7	Gas oils (petroleum), heavy vacuum.
64741–58–8	Gas oils (petroleum), light vacuum.
64741–59–9	Distillates (petroleum), light catalytic cracked.
64741–60–2	Distillates (petroleum), intermediate catalytic cracked.
64741–61–3	Distillates (petroleum), heavy catalytic cracked.
64741–62–4	Clarified oils (petroleum), catalytic cracked.
64741–63–5	Naphtha (petroleum), light catalytic reformed.
64741–64–6	Naphtha (petroleum), full-range alkylate.
64741–65–7	Naphtha (petroleum), heavy alkylate.
64741–66–8	Naphtha (petroleum), light alkylate.
64741–67–9	Residues (petroleum), catalytic reformer fractionator.
64741–68–0	Naphtha (petroleum), heavy catalytic reformed.
64741–69–1	Naphtha (petroleum), light hydrocracked.
64741–70–4	Naphtha (petroleum), isomerization.
64741–73–7	Distillates (petroleum), alkylate.
64741–74–8	Naphtha (petroleum), light thermal cracked.
64741–75–9	Residues (petroleum), hydrocracked.
64741–76–0	Distillates (petroleum), heavy hydrocracked.
64741–77–1	Distillates (petroleum), light hydrocracked.
64741–78–2	Naphtha (petroleum), heavy hydrocracked.
64741–79–3	Coke (petroleum).
64741–80–6	Residues (petroleum), thermal cracked.
64741–81–7	Distillates (petroleum), heavy thermal cracked.
64741–82–8	Distillates (petroleum), light thermal cracked.
64741–83–9	Naphtha (petroleum), heavy thermal cracked.
64741–84–0	Naphtha (petroleum), solvent-refined light.
64741–85–1	Raffinates (petroleum), sorption process.
64741–86–2	Distillates (petroleum), sweetened middle.
64741–87–3	Naphtha (petroleum), sweetened.
64741–88–4	Distillates (petroleum), solvent-refined heavy paraffinic.
64741–89–5	Distillates (petroleum), solvent-refined light paraffinic.
64741–90–8	Gas oils (petroleum), solvent-refined.
64741–91–9	Distillates (petroleum), solvent-refined middle.
64741–92–0	Naphtha (petroleum), solvent-refined heavy.
64741–95–3	Residual oils (petroleum), solvent deasphalted.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CASRN	Product
64741–96–4	Distillates (petroleum), solvent-refined heavy naphthenic.
64741–97–5	Distillates (petroleum), solvent-refined light naphthenic.
64741–98–6	Extracts (petroleum), heavy naphtha solvent.
64741–99–7	Extracts (petroleum), light naphtha solvent.
64742–01–4	Residual oils (petroleum), solvent-refined.
64742–03–6	Extracts (petroleum), light naphthenic distillate solvent.
64742–04–7	Extracts (petroleum), heavy paraffinic distillate solvent.
64742–05–8	Extracts (petroleum), light paraffinic distillate solvent.
64742–06–9	Extracts (petroleum), middle distillate solvent.
64742–07–0	Raffinates (petroleum), residual oil decarbonization.
64742–08–1	Raffinates (petroleum), heavy naphthenic distillate decarbonization.
64742–09–2	Raffinates (petroleum), heavy paraffinic distillate decarbonization.
64742–10–5	Extracts (petroleum), residual oil solvent.
64742–11–6	Extracts (petroleum), heavy naphthenic distillate solvent.
64742–12–7	Gas oils (petroleum), acid-treated.
64742–13–8	Distillates (petroleum), acid-treated middle.
64742–14–9	Distillates (petroleum), acid-treated light.
64742–15–0	Naphtha (petroleum), acid-treated.
64742–16–1	Petroleum resins.
64742–18–3	Distillates (petroleum), acid-treated heavy naphthenic.
64742–19–4	Distillates (petroleum), acid-treated light naphthenic.
64742–20–7	Distillates (petroleum), acid-treated heavy paraffinic.
64742–21–8	Distillates (petroleum), acid-treated light paraffinic.
64742–22–9	Naphtha (petroleum), chemically neutralized heavy.
64742–23–0	Naphtha (petroleum), chemically neutralized light.
64742–24–1	Sludges (petroleum), acid.
64742–25–2	Lubricating oils (petroleum), acid-treated spent.
64742–26–3	Hydrocarbon waxes (petroleum), acid-treated.
64742–27–4	Distillates (petroleum), chemically neutralized heavy paraffinic.
64742–28–5	Distillates (petroleum), chemically neutralized light paraffinic.
64742–29–6	Gas oils (petroleum), chemically neutralized.
64742–30–9	Distillates (petroleum), chemically neutralized middle.
64742–31–0	Distillates (petroleum), chemically neutralized light.
64742–32–1	Lubricating oils (petroleum), chemically neutralized spent.
64742–33–2	Hydrocarbon waxes (petroleum), chemically neutralized.
64742–34–3	Distillates (petroleum), chemically neutralized heavy naphthenic.
64742–35–4	Distillates (petroleum), chemically neutralized light naphthenic.
64742–36–5	Distillates (petroleum), clay-treated heavy paraffinic.
64742–37–6	Distillates (petroleum), clay-treated light paraffinic.
64742–38–7	Distillates (petroleum), clay-treated middle.
64742–39–8	Neutralizing agents (petroleum), spent sodium carbonate.
64742–40–1	Neutralizing agents (petroleum), spent sodium hydroxide.
64742–41–2	Residual oils (petroleum), clay-treated.
64742–42–3	Hydrocarbon waxes (petroleum), clay-treated microcryst.
64742–43–4	Paraffin waxes (petroleum), clay-treated.
64742–44–5	Distillates (petroleum), clay-treated heavy naphthenic.
64742–45–6	Distillates (petroleum), clay-treated light naphthenic.
64742–46–7	Distillates (petroleum), hydrotreated middle.
64742–47–8	Distillates (petroleum), hydrotreated light.
64742–48–9	Naphtha (petroleum), hydrotreated heavy.
64742–49–0	Naphtha (petroleum), hydrotreated light.
64742–50–3	Lubricating oils (petroleum), clay-treated spent.
64742–51–4	Paraffin waxes (petroleum), hydrotreated.
64742–52–5	Distillates (petroleum), hydrotreated heavy naphthenic.
64742–53–6	Distillates (petroleum), hydrotreated light naphthenic.
64742–54–7	Distillates (petroleum), hydrotreated heavy paraffinic.
64742–55–8	Distillates (petroleum), hydrotreated light paraffinic.
64742–56–9	Distillates (petroleum), solvent-dewaxed light paraffinic.
64742–57–0	Residual oils (petroleum), hydrotreated.
64742–58–1	Lubricating oils (petroleum), hydrotreated spent.
64742–59–2	Gas oils (petroleum), hydrotreated vacuum.
64742–60–5	Hydrocarbon waxes (petroleum), hydrotreated microcryst.
64742–61–6	Slack wax (petroleum).
64742–62–7	Residual oils (petroleum), solvent-dewaxed.
64742–63–8	Distillates (petroleum), solvent-dewaxed heavy naphthenic.
64742–64–9	Distillates (petroleum), solvent-dewaxed light naphthenic.
64742–65–0	Distillates (petroleum), solvent-dewaxed heavy paraffinic.
64742–67–2	Foots oil (petroleum).
64742–68–3	Naphthenic oils (petroleum), catalytic dewaxed heavy.
64742–69–4	Naphthenic oils (petroleum), catalytic dewaxed light.
64742–70–7	Paraffin oils (petroleum), catalytic dewaxed heavy.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CASRN	Product
64742–71–8	Paraffin oils (petroleum), catalytic dewaxed light.
64742–72–9	Distillates (petroleum), catalytic dewaxed middle.
64742–73–0	Naphtha (petroleum), hydrodesulfurized light.
64742–75–2	Naphthenic oils (petroleum), complex dewaxed heavy.
64742–76–3	Naphthenic oils (petroleum), complex dewaxed light.
64742–78–5	Residues (petroleum), hydrodesulfurized atmospheric tower.
64742–79–6	Gas oils (petroleum), hydrodesulfurized.
64742–80–9	Distillates (petroleum), hydrodesulfurized middle.
64742–81–0	Kerosine (petroleum), hydrodesulfurized.
64742–82–1	Naphtha (petroleum), hydrodesulfurized heavy.
64742–83–2	Naphtha (petroleum), light steam-cracked.
64742–85–4	Residues (petroleum), hydrodesulfurized vacuum.
64742–86–5	Gas oils (petroleum), hydrodesulfurized heavy vacuum.
64742–87–6	Gas oils (petroleum), hydrodesulfurized light vacuum.
64742–88–7	Solvent naphtha (petroleum), medium aliph.
64742–89–8	Solvent naphtha (petroleum), light aliph.
64742–90–1	Residues (petroleum), steam-cracked.
64742–91–2	Distillates (petroleum), steam-cracked.
64742–92–3	Petroleum resins, oxidized.
64742–93–4	Asphalt, oxidized.
64742–94–5	Solvent naphtha (petroleum), heavy arom.
64742–95–6	Solvent naphtha (petroleum), light arom.
64742–96–7	Solvent naphtha (petroleum), heavy aliph.
64742–97–8	Distillates (petroleum), oxidized heavy.
64742–98–9	Distillates (petroleum), oxidized light.
64742–99–0	Residual oils (petroleum), oxidized.
64743–00–6	Hydrocarbon waxes (petroleum), oxidized.
64743–01–7	Petrolatum (petroleum), oxidized.
64743–02–8	Alkenes, C>10 .alpha.-.
64743–03–9	Phenols (petroleum).
64743–04–0	Coke (petroleum), recovery.
64743–05–1	Coke (petroleum), calcined.
64743–06–2	Extracts (petroleum), gas oil solvent.
64743–07–3	Sludges (petroleum), chemically neutralized.
64754–89–8	Naphthenic acids (petroleum), crude.
64771–71–7	Paraffins (petroleum), normal C>10.
64771–72–8	Paraffins (petroleum), normal C5–20.
67254–74–4	Naphthenic oils.
67674–12–8	Residual oils (petroleum), oxidized, compounds with triethanolamine.
67674–13–9	Petrolatum (petroleum), oxidized, partially deacidified.
67674–15–1	Petrolatum (petroleum), oxidized, Me ester.
67674–16–2	Hydrocarbon waxes (petroleum), oxidized, partially deacidified.
67674–17–3	Distillates (petroleum), oxidized light, compounds with triethanolamine.
67674–18–4	Distillates (petroleum), oxidized light, Bu esters.
67891–79–6	Distillates (petroleum), heavy arom.
67891–80–9	Distillates (petroleum), light arom.
67891–81–0	Distillates (petroleum), oxidized light, potassium salts.
67891–82–1	Hydrocarbon waxes (petroleum), oxidized, compounds with ethanolamine.
67891–83–2	Hydrocarbon waxes (petroleum), oxidized, compounds with isopropanolamine.
67891–85–4	Hydrocarbon waxes (petroleum), oxidized, compounds with triisopropanolamine.
67891–86–5	Hydrocarbon waxes (petroleum), oxidized, compds. with diisopropanolamine.
68131–05–5	Hydrocarbon oils, process blends.
68131–49–7	Aromatic hydrocarbons, C6–10, acid-treated, neutralized.
68131–75–9	Gases (petroleum), C3–4.
68153–22–0	Paraffin waxes and Hydrocarbon waxes, oxidized.
68187–57–5	Pitch, coal tar-petroleum.
68187–58–6	Pitch, petroleum, arom.
68187–60–0	Hydrocarbons, C4, ethane-propane-cracked.
68307–98–2	Tail gas (petroleum), catalytic cracked distillate and catalytic cracked naphtha fractionation absorber.
68307–99–3	Tail gas (petroleum), catalytic polymn. naphtha fractionation stabilizer.
68308–00–9	Tail gas (petroleum), catalytic reformed naphtha fractionation stabilizer, hydrogen sulfide-free.
68308–01–0	Tail gas (petroleum), cracked distillate hydrotreater stripper.
68308–02–1	Tail gas (petroleum), distn., hydrogen sulfide-free.
68308–03–2	Tail gas (petroleum), gas oil catalytic cracking absorber.
68308–04–3	Tail gas (petroleum), gas recovery plant.
68308–05–4	Tail gas (petroleum), gas recovery plant deethanizer.
68308–06–5	Tail gas (petroleum), hydrodesulfurized distillate and hydrodesulfurized naphtha fractionator, acid-free.
68308–07–6	Tail gas (petroleum), hydrodesulfurized vacuum gas oil stripper, hydrogen sulfide-free.
68308–08–7	Tail gas (petroleum), isomerized naphtha fractionation stabilizer.
68308–09–8	Tail gas (petroleum), light straight-run naphtha stabilizer, hydrogen sulfide-free.
68308–10–1	Tail gas (petroleum), straight-run distillate hydrodesulfurizer, hydrogen sulfide-free.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CASRN	Product
68308–11–2	Tail gas (petroleum), propane-propylene alkylation feed prep deethanizer.
68308–12–3	Tail gas (petroleum), vacuum gas oil hydrodesulfurizer, hydrogen sulfide-free.
68308–27–0	Fuel gases, refinery.
68333–22–2	Residues (petroleum), atmospheric.
68333–23–3	Naphtha (petroleum), heavy coker.
68333–24–4	Hydrocarbon waxes (petroleum), oxidized, compds. with triethanolamine.
68333–25–5	Distillates (petroleum), hydrodesulfurized light catalytic cracked.
68333–26–6	Clarified oils (petroleum), hydrodesulfurized catalytic cracked.
68333–27–7	Distillates (petroleum), hydrodesulfurized intermediate catalytic cracked.
68333–28–8	Distillates (petroleum), hydrodesulfurized heavy catalytic cracked.
68333–29–9	Residues (petroleum), light naphtha solvent extracts.
68333–30–2	Distillates (petroleum), oxidized heavy thermal cracked.
68333–81–3	Alkanes, C4–12.
68333–88–0	Aromatic hydrocarbons, C9–17.
68334–30–5	Fuels, diesel.
68409–99–4	Gases (petroleum), catalytic cracked overheads.
68410–00–4	Distillates (petroleum), crude oil.
68410–05–9	Distillates (petroleum), straight-run light.
68410–12–8	Distillates (petroleum), steam-cracked, C5–10 fraction, high-temperature stripping products with light steam-cracked petroleum naphtha C5 fraction polymers.
68410–71–9	Raffinates (petroleum), catalytic reformer ethylene glycol-water countercurrent exts.
68410–96–8	Distillates (petroleum), hydrotreated middle, intermediate boiling.
68410–97–9	Distillates (petroleum), light distillate hydrotreating process, low-boiling.
68410–98–0	Distillates (petroleum), hydrotreated heavy naphtha, deisohexanizer overheads.
68411–00–7	Alkenes, C>8.
68425–29–6	Distillates (petroleum), naphtha-raffinate pyrolyzate-derived, gasoline-blending.
68425–33–2	Petrolatum (petroleum), oxidized, barium salt.
68425–34–3	Petrolatum (petroleum), oxidized, calcium salt.
68425–35–4	Raffinates (petroleum), reformer, Lurgi unit-sepd.
68425–39–8	Alkenes, C>10 .alpha.-, oxidized.
68441–09–8	Hydrocarbon waxes (petroleum), clay-treated microcryst., contg. polyethylene, oxidized.
68459–78–9	Alkenes, C18–24 .alpha.-, dimers.
68475–57–0	Alkanes, C1–2.
68475–58–1	Alkanes, C2–3.
68475–59–2	Alkanes, C3–4.
68475–60–5	Alkanes, C4–5.
68475–61–6	Alkenes, C5, naphtha-raffinate pyrolyzate-derived.
68475–70–7	Aromatic hydrocarbons, C6–8, naphtha-raffinate pyrolyzate-derived.
68475–79–6	Distillates (petroleum), catalytic reformed depentanizer.
68475–80–9	Distillates (petroleum), light steam-cracked naphtha.
68476–26–6	Fuel gases.
68476–27–7	Fuel gases, amine system residues.
68476–28–8	Fuel gases, C6–8 catalytic reformer.
68476–29–9	Fuel gases, crude oil distillates.
68476–30–2	Fuel oil, no. 2.
68476–31–3	Fuel oil, no. 4.
68476–32–4	Fuel oil, residues-straight-run gas oils, high-sulfur.
68476–33–5	Fuel oil, residual.
68476–34–6	Fuels, diesel, no. 2.
68476–39–1	Hydrocarbons, aliph.-arom.-C4–5-olefinic.
68476–40–4	Hydrocarbons, C3–4.
68476–42–6	Hydrocarbons, C4–5.
68476–43–7	Hydrocarbons, C4–6, C5-rich.
68476–44–8	Hydrocarbons, C>3.
68476–45–9	Hydrocarbons, C5–10 arom. conc., ethylene-manuf.-by-product.
68476–46–0	Hydrocarbons, C3–11, catalytic cracker distillates.
68476–47–1	Hydrocarbons, C2–6, C6–8 catalytic reformer.
68476–49–3	Hydrocarbons, C2–4, C3-rich.
68476–50–6	Hydrocarbons, C≥5, C5–6-rich.
68476–52–8	Hydrocarbons, C4, ethylene-manuf.-by-product.
68476–53–9	Hydrocarbons, C≥20, petroleum wastes.
68476–54–0	Hydrocarbons, C3–5, polymn. unit feed.
68476–55–1	Hydrocarbons, C5-rich.
68476–56–2	Hydrocarbons, cyclic C5 and C6.
68476–77–7	Lubricating oils, refined used.
68476–81–3	Paraffin waxes and Hydrocarbon waxes, oxidized, calcium salts.
68476–84–6	Petroleum products, gases, inorg.
68476–85–7	Petroleum gases, liquefied.
68476–86–8	Petroleum gases, liquefied, sweetened.
68477–25–8	Waste gases, vent gas, C1–6.
68477–26–9	Wastes, petroleum.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CASRN	Product
68477–29–2	Distillates (petroleum), catalytic reformer fractionator residue, high-boiling.
68477–30–5	Distillates (petroleum), catalytic reformer fractionator residue, intermediate-boiling.
68477–31–6	Distillates (petroleum), catalytic reformer fractionator residue, low-boiling.
68477–33–8	Gases (petroleum), C3–4, isobutane-rich.
68477–34–9	Distillates (petroleum), C3–5, 2-methyl-2-butene-rich.
68477–35–0	Distillates (petroleum), C3–6, piperylene-rich.
68477–36–1	Distillates (petroleum), cracked steam-cracked, C5–18 fraction.
68477–38–3	Distillates (petroleum), cracked steam-cracked petroleum distillates.
68477–39–4	Distillates (petroleum), cracked stripped steam-cracked petroleum distillates, C8–10 fraction.
68477–40–7	Distillates (petroleum), cracked stripped steam-cracked petroleum distillates, C10–12 fraction.
68477–41–8	Gases (petroleum), extractive, C3–5, butadiene-butene-rich.
68477–42–9	Gases (petroleum), extractive, C3–5, butene-isobutylene-rich.
68477–44–1	Distillates (petroleum), heavy naphthenic, mixed with steam-cracked petroleum distillates C5–12 fraction.
68477–47–4	Distillates (petroleum), mixed heavy olefin vacuum, heart-cut.
68477–48–5	Distillates (petroleum), mixed heavy olefin vacuum, low-boiling.
68477–53–2	Distillates (petroleum), steam-cracked, C5–12 fraction.
68477–54–3	Distillates (petroleum), steam-cracked, C8–12 fraction.
68477–55–4	Distillates (petroleum), steam-cracked, C5–10 fraction, mixed with light steam-cracked petroleum naphtha C5 fraction.
68477–58–7	Distillates (petroleum), steam-cracked petroleum distillates, C5–18 fraction.
68477–59–8	Distillates (petroleum), steam-cracked petroleum distillates cyclopentadiene conc.
68477–60–1	Extracts (petroleum), cold-acid.
68477–61–2	Extracts (petroleum), cold-acid, C4–6.
68477–62–3	Extracts (petroleum), cold-acid, C3–5, butene-rich.
68477–63–4	Extracts (petroleum), reformer recycle.
68477–64–5	Gases (petroleum), acetylene manuf. off.
68477–65–6	Gases (petroleum), amine system feed.
68477–66–7	Gases (petroleum), benzene unit hydrodesulfurizer off.
68477–67–8	Gases (petroleum), benzene unit recycle, hydrogen-rich.
68477–68–9	Gases (petroleum), blend oil, hydrogen-nitrogen-rich.
68477–69–0	Gases (petroleum), butane splitter overheads.
68477–70–3	Gases (petroleum), C2–3.
68477–71–4	Gases (petroleum), catalytic-cracked gas oil depropanizer bottoms, C4-rich acid-free.
68477–72–5	Gases (petroleum), catalytic-cracked naphtha debutanizer bottoms, C3–5-rich.
68477–73–6	Gases (petroleum), catalytic cracked naphtha depropanizer overhead, C3-rich acid-free.
68477–74–7	Gases (petroleum), catalytic cracker.
68477–75–8	Gases (petroleum), catalytic cracker, C1–5-rich.
68477–76–9	Gases (petroleum), catalytic polymd. naphtha stabilizer overhead, C2–4-rich.
68477–77–0	Gases (petroleum), catalytic reformed naphtha stripper overheads.
68477–79–2	Gases (petroleum), catalytic reformer, C1–4-rich.
68477–80–5	Gases (petroleum), C6–8 catalytic reformer recycle.
68477–81–6	Gases (petroleum), C6–8 catalytic reformer.
68477–82–.7	Gases (petroleum), C6–8 catalytic reformer recycle, hydrogen-rich.
68477–83–8	Gases (petroleum), C3–5 olefinic-paraffinic alkylation feed.
68477–84–9	Gases (petroleum), C2-return stream.
68477–85–0	Gases (petroleum), C4-rich.
68477–86–1.	Gases (petroleum), deethanizer overheads.
68477–87–2.	Gases (petroleum), deisobutanizer tower overheads.
68477–88–3	Gases (petroleum), deethanizer overheads, C3-rich.
68477–89–4	Distillates (petroleum), depentanizer overheads.
68477–90–7	Gases (petroleum), depropanizer dry, propene-rich.
68477–91–8	Gases (petroleum), depropanizer overheads.
68477–92–9	Gases (petroleum), dry sour, gas-concentration concn.-unit-off.
68477–93–0	Gases (petroleum), gas concn. reabsorber distn.
68477–94–1	Gases (petroleum), gas recovery plant depropanizer overheads
68477–95–2	Gases (petroleum), Girbatol unit feed.
68477–96–3	Gases (petroleum), hydrogen absorber off.
68477–97–4	Gases (petroleum), hydrogen-rich.
68477–98–5	Gases (petroleum), hydrotreater blend oil recycle, hydrogen-nitrogen rich.
68477–99–6	Gases (petroleum), isomerized naphtha fractionater, C4-rich, hydrogen sulfide-free.
68478–00–2	Gases (petroleum), recycle, hydrogen-rich.
68478–01–3	Gases (petroleum), reformer make-up, hydrogen-rich.
68478–02–4	Gases (petroleum), reforming hydrotreater.
68478–03–5	Gases (petroleum), reforming hydrotreater, hydrogen-methane-rich.
68478–04–6	Gases (petroleum), reforming hydrotreater make-up, hydrogen-rich.
68478–05–7	Gases (petroleum), thermal cracking distn.
68478–08–0	Naphtha (petroleum), light steam-cracked, C5-fraction, oligomer conc.
68478–10–4	Naphtha (petroleum), light steam-cracked, debenzenized, C8–16-cycloalkadiene conc.
68478–12–6	Residues (petroleum), butane splitter bottoms.
68478–13–7	Residues (petroleum), catalytic reformer fractionator residue distn.
68478–15–9	Residues (petroleum), C6–8 catalytic reformer.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CASRN	Product
68478–16–0	Residual oils (petroleum), deisobutanizer tower.
68478–17–1	Residues (petroleum), heavy coker gas oil and vacuum gas oil.
68478–18–2	Residues (petroleum), heavy olefin vacuum.
68478–19–3	Residual oils (petroleum), propene purifn. splitter.
68478–20–6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free.
68478–22–8	Tail gas (petroleum), catalytic cracked naphtha stabilization absorber.
68478–24–0	Tail gas (petroleum), catalytic cracker, catalytic reformer and hydrodesulfurizer combined fractionater.
68478–25–1	Tail gas (petroleum), catalytic cracker refractionation absorber.
68478–26–2	Tail gas (petroleum), catalytic reformed naphtha fractionation stabilizer.
68478–27–3	Tail gas (petroleum), catalytic reformed naphtha separator.
68478–28–4	Tail gas (petroleum), catalytic reformed naphtha stabilizer.
68478–29–5	Tail gas (petroleum), cracked distillate hydrotreater separator.
68478–30–8	Tail gas (petroleum), hydrodesulfurized straight-run naphtha separator.
68478–31–9	Tail gas (petroleum), isomerized naphtha fractionates, hydrogen sulfide-free.
68478–32–0	Tail gas (petroleum), saturate gas plant mixed stream, C4-rich.
68478–33–1	Tail gas (petroleum), saturate gas recovery plant, C1–2-rich.
68478–34–2	Tail gas (petroleum), vacuum residues thermal cracker.
68512–61–8	Residues (petroleum), heavy coker and light vacuum.
68512–62–9	Residues (petroleum), light vacuum.
68512–78–7	Solvent naphtha (petroleum), light arom., hydrotreated.
68512–91–4	Hydrocarbons, C3–4-rich, petroleum distillates.
68513–02–0	Naphtha (petroleum), full-range coker.
68513–03–1	Naphtha (petroleum), light catalytic reformed, arom.-free.
68513–11–1	Fuel gases, hydrotreater fractionation, scrubbed.
68513–12–2	Fuel gases, saturate gas unit fractionater-absorber overheads.
68513–13–3	Fuel gases, thermal cracked catalytic cracking residue.
68513–14–4	Gases (petroleum), catalytic reformed straight-run naphtha stabilizer overheads.
68513–15–5	Gases (petroleum), full-range straight-run naphtha dehexanizer off.
68513–16–6	Gases (petroleum), hydrocracking depropanizer off, hydrocarbon-rich.
68513–17–7	Gases (petroleum), light straight-run naphtha stabilizer off.
68513–18–8	Gases (petroleum), reformer effluent high-pressure flash drum off.
68513–19–9	Gases (petroleum), reformer effluent low-pressure flash drum off.
68513–62–2	Disulfides, C5–12-alkyl.
68513–63–3	Distillates (petroleum), catalytic reformed straight-run naphtha overheads.
68513–65–5	Butane, branched and linear.
68513–66–6	Residues (petroleum), alkylation splitter, C4-rich.
68513–67–7	Residues (petroleum), cyclooctadiene bottoms.
68513–68–8	Residues (petroleum), deethanizer tower.
68513–69–9	Residues (petroleum), steam-cracked light.
68513–74–6	Waste gases, ethylene oxide absorber-reactor.
68514–15–8	Gasoline, vapor-recovery.
68514–29–4	Hydrocarbons, amylene feed debutanizer overheads non-extractable raffinates.
68514–31–8	Hydrocarbons, C1–4.
68514–32–9	Hydrocarbons, C10 and C12, olefin-rich.
68514–33–0	Hydrocarbons, C12 and C14, olefin-rich.
68514–34–1	Hydrocarbons, C9–14, ethylene-manuf.-by-product.
68514–35–2	Hydrocarbons, C14–30, olefin-rich.
68514–36–3	Hydrocarbons, C1–4, sweetened.
68514–37–4	Hydrocarbons, C4–5-unsatd..
68514–38–5	Hydrocarbons, C4–10-unsatd..
68514–39–6	Naphtha (petroleum), light steam-cracked, isoprene-rich.
68514–79–4	Petroleum products, hydrofiner-powerformer reformates.
68515–25–3	Benzene, C1–9-alkyl derivs.
68515–26–4	Benzene, di-C12–14-alkyl derivs.
68515–27–5	Benzene, di-C10–14-alkyl derivs., fractionation overheads, heavy ends.
68515–28–6	Benzene, di-C10–14-alkyl derivs., fractionation overheads, light ends.
68515–29–7	Benzene, di-C10–14-alkyl derivs., fractionation overheads, middle cut.
68515–30–0	Benzene, mono-C20–48-alkyl derivs.
68515–32–2	Benzene, mono-C12–14-alkyl derivs., fractionation bottoms.
68515–33–3	Benzene, mono-C10–12-alkyl derivs., fractionation bottoms, heavy ends.
68515–34–4	Benzene, mono-C12–14-alkyl derivs., fractionation bottoms, heavy ends.
68515–35–5	Benzene, mono-C10–12-alkyl derivs., fractionation bottoms, light ends.
68515–36–6	Benzene, mono-C12–14-alkyl derivs., fractionation bottoms, light ends.
68516–20–1	Naphtha (petroleum), steam-cracked middle arom.
68526–52–3	Alkenes, C6.
68526–53–4	Alkenes, C6–8, C7-rich.
68526–54–5	Alkenes, C7–9, C8-rich.
68526–55–6	Alkenes, C8–10, C9-rich.
68526–56–7	Alkenes, C9–11, C10-rich.
68526–57–8	Alkenes, C10–12, C11-rich.
68526–58–9	Alkenes, C11–13, C12-rich.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CASRN	Product
68526–77–2	Aromatic hydrocarbons, ethane cracking scrubber effluent and flare drum.
68526–99–8	Alkenes, C6–9 .alpha.-.
68527–00–4	Alkenes, C8–9 .alpha.-.
68527–11–7	Alkenes, C5.
68527–13–9	Gases (petroleum), acid, ethanolamine scrubber.
68527–14–0	Gases (petroleum), methane-rich off.
68527–15–1	Gases (petroleum), oil refinery gas distn. off.
68527–16–2	Hydrocarbons, C1–3.
68527–18–4	Gas oils (petroleum), steam-cracked.
68527–19–5	Hydrocarbons, C1–4, debutanizer fraction.
68527–21–9	Naphtha (petroleum), clay-treated full-range straight-run.
68527–22–0	Naphtha (petroleum), clay-treated light straight-run.
68527–23–1	Naphtha (petroleum), light steam-cracked arom.
68527–26–4	Naphtha (petroleum), light steam-cracked, debenzenized.
68527–27–5	Naphtha (petroleum), full-range alkylate, butane-contg.
68553–00–4	Fuel oil, no. 6.
68553–14–0	Hydrocarbons, C8–11.
68602–79–9	Distillates (petroleum), benzene unit hydrotreater dipentanizer overheads.
68602–81–3	Distillates, hydrocarbon resin prodn. higher boiling.
68602–82–4	Gases (petroleum), benzene unit hydrotreater depentenizer overheads.
68602–83–5	Gases (petroleum), C1–5, wet.
68602–84–6	Gases (petroleum), secondary absorber off, fluidized catalytic cracker overheads fractionater.
68602–96–0	Distillates (petroleum), oxidized light, strong acid components, compds. with diethanolamine.
68602–97–1	Distillates (petroleum), oxidized light, strong acid components, sodium salts.
68602–98–2	Distillates (petroleum), oxidized light, strong acid components.
68602–99–3	Distillates (petroleum), oxidized light, strong acid-free.
68603–00–9	Distillates (petroleum), thermal cracked naphtha and gas oil.
68603–01–0	Distillates (petroleum), thermal cracked naphtha and gas oil, C5-dimer-contg.
68603–02–1	Distillates (petroleum), thermal cracked naphtha and gas oil, dimerized.
68603–03–2	Distillates (petroleum), thermal cracked naphtha and gas oil, extractive.
68603–08–7	Naphtha (petroleum), arom.- contg.
68603–09–8	Hydrocarbon waxes (petroleum), oxidized, calcium salts.
68603–10–1	Hydrocarbon waxes (petroleum), oxidized, Me esters, barium salts.
68603–11–2	Hydrocarbon waxes (petroleum), oxidized, Me esters, calcium salts.
68603–12–3	Hydrocarbon waxes (petroleum), oxidized, Me esters, sodium salts.
68603–13–4	Petrolatum (petroleum), oxidized, ester with sorbitol.
68603–14–5	Residual oils (petroleum), oxidized, calcium salts.
68603–31–6	Alkenes, C10, tert-amylene concentrator by-product.
68603–32–7	Alkenes, C15–20 .alpha.-, isomerized.
68606–09–7	Fuel gases, expander off.
68606–10–0	Gasoline, pyrolysis, debutanizer bottoms.
68606–11–1	Gasoline, straight-run, topping-plant.
68606–24–6	Hydrocarbons, C4, butene concentrator by-product.
68606–25–7	Hydrocarbons, C2–4.
68606–26–8	Hydrocarbons, C3.
68606–27–9	Gases (petroleum), alkylation feed.
68606–28–0	Hydrocarbons, C5 and C10-aliph. and C6–8-arom.
68606–31–5	Hydrocarbons, C3–5, butadiene purification (purifn.) by-product.
68606–34–8	Gases (petroleum), depropanizer bottoms fractionation off.
68606–36–0	Hydrocarbons, C5-unsatd. rich, isoprene purifn. by-product.
68607–11–4	Petroleum products, refinery gases.
68607–30–7	Residues (petroleum), topping plant, low-sulfur.
68608–56–0	Waste gases, from carbon black manuf.
68647–60–9	Hydrocarbons, C>4.
68647–61–0	Hydrocarbons, C4–5, tert-amylene concentrator by-product.
68647–62–1	Hydrocarbons, C4–5, butene concentrator by-product, sour.
68650–36–2	Aromatic hydrocarbons, C8, *o*-xylene-lean.
68650–37–3	Paraffin waxes (petroleum), oxidized, sodium salts.
68782–97–8	Distillates (petroleum), hydrofined lubricating-oil.
68782–98–9	Extracts (petroleum), clarified oil solvent, condensed-ring-arom.-contg.
68782–99–0	Extracts (petroleum), heavy clarified oil solvent, condensed-ring-arom.-contg.
68783–00–6	Extracts (petroleum), heavy naphthenic distillate solvent, arom. conc.
68783–01–7	Extracts (petroleum), heavy naphthenic distillate solvent, paraffinic conc.
68783–02–8	Extracts (petroleum), intermediate clarified oil solvent, condensed-ring-arom.-contg.
68783–04–0	Extracts (petroleum), solvent-refined heavy paraffinic distillate solvent.
68783–05–1	Gases (petroleum), ammonia-hydrogen sulfide, water-satd.
68783–06–2	Gases (petroleum), hydrocracking low-pressure separator.
68783–07–3	Gases (petroleum), refinery blend.
68783–08–4	Gas oils (petroleum), heavy atmospheric.
68783–09–5	Naphtha (petroleum), catalytic cracked light distd.
68783–12–0	Naphtha (petroleum), unsweetened.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CASRN	Product
68783–13–1	Residues (petroleum), coker scrubber, condensed-ring-arom.-contg.
68783–15–3	Alkenes, C6–7 .alpha.-.
68783–61–9	Fuel gases, refinery, sweetened.
68783–62–0	Fuel gases, refinery, unsweetened.
68783–64–2	Gases (petroleum), catalytic cracking.
68783–65–3	Gases (petroleum), C2–4, sweetened.
68783–66–4	Naphtha (petroleum), light, sweetened.
68814–47–1	Waste gases, refinery vent.
68814–67–5	Gases (petroleum), refinery.
68814–87–9	Distillates (petroleum), full-range straight-run middle.
68814–89–1	Extracts (petroleum), heavy paraffinic distillates, solvent-deasphalted.
68814–90–4	Gases (petroleum), platformer products separator off.
68814–91–5	Alkenes, C5–9 .alpha.-.
68855–57–2	Alkenes, C6–12 .alpha.-.
68855–58–3	Alkenes, C10–16 .alpha.-.
68855–59–4	Alkenes, C14–18 .alpha.-.
68855–60–7	Alkenes, C14–20 .alpha.-.
68911–58–0	Gases (petroleum), hydrotreated sour kerosine depentanizer stabilizer off.
68911–59–1	Gases (petroleum), hydrotreated sour kerosine flash drum.
68915–96–8	Distillates (petroleum), heavy straight-run.
68915–97–9	Gas oils (petroleum), straight-run, high-boiling.
68918–69–4	Petrolatum (petroleum), oxidized, zinc salt.
68918–73–0	Residues (petroleum), clay-treating filter wash.
68918–93–4	Paraffin waxes and Hydrocarbon waxes, oxidized, alkali metal salts.
68918–98–9	Fuel gases, refinery, hydrogen sulfide-free.
68918–99–0	Gases (petroleum), crude oil fractionation off.
68919–00–6	Gases (petroleum), dehexanizer off.
68919–01–7	Gases (petroleum), distillate unifiner desulfurization stripper off.
68919–02–8	Gases (petroleum), fluidized catalytic cracker fractionation off.
68919–03–9	Gases (petroleum), fluidized catalytic cracker scrubbing secondary absorber off.
68919–04–0	Gases (petroleum), heavy distillate hydrotreater desulfurization stripper off.
68919–05–1	Gases (petroleum), light straight run gasoline fractionation stabilizer off.
68919–06–2	Gases (petroleum), naphtha unifiner desulfurization stripper off.
68919–07–3	Gases (petroleum), platformer stabilizer off, light ends fractionation.
68919–08–4	Gases (petroleum), preflash tower off, crude distn.
68919–09–5	Gases (petroleum), straight-run naphtha catalytic reforming off.
68919–10–8	Gases (petroleum), straight-run stabilizer off.
68919–11–9	Gases (petroleum), tar stripper off.
68919–12–0	Gases (petroleum), unifiner stripper off.
68919–15–3	Hydrocarbons, C6–12, benzene-recovery.
68919–16–4	Hydrocarbons, catalytic alkylation, by-products, C3–6.
68919–17–5	Hydrocarbons, C12–20, catalytic alkylation by-products.
68919–19–7	Gases (petroleum), fluidized catalytic cracker splitter residues.
68919–20–0	Gases (petroleum), fluidized catalytic cracker splitter overheads.
68919–37–9	Naphtha (petroleum), full-range reformed.
68920–06–9	Hydrocarbons, C7–9.
68920–07–0	Hydrocarbons, C<10-linear.
68920–64–9	Disulfides, di-C1–2-alkyl.
68921–07–3	Distillates (petroleum), hydrotreated light catalytic cracked.
68921–08–4	Distillates (petroleum), light straight-run gasoline fractionation stabilizer overheads.
68921–09–5	Distillates (petroleum), naphtha unifiner stripper.
68921–67–5	Hydrocarbons, ethylene-manuf.-by-product distn. residues.
68952–76–1	Gases (petroleum), catalytic cracked naphtha debutanizer.
68952–77–2	Tail gas (petroleum), catalytic cracked distillate and naphtha stabilizer.
68952–78–3	Tail gas (petroleum), catalytic hydrodesulfurized distillate fractionation stabilizer, hydrogen sulfide-free.
68952–79–4	Tail gas (petroleum), catalytic hydrodesulfurized naphtha separator.
68952–80–7	Tail gas (petroleum), straight-run naphtha hydrodesulfurizer.
68952–81–8	Tail gas (petroleum), thermal-cracked distillate, gas oil and naphtha absorber.
68952–82–9	Tail gas (petroleum), thermal cracked hydrocarbon fractionation stabilizer, petroleum coking.
68953–80–0	Benzene, mixed with toluene, dealkylation product.
68955–27–1	Distillates (petroleum), petroleum residues vacuum.
68955–28–2	Gases (petroleum), light steam-cracked, butadiene conc.
68955–31–7	Gases (petroleum), butadiene process, inorg.
68955–32–8	Natural gas, substitute, steam-reformed desulfurized naphtha.
68955–33–9	Gases (petroleum), sponge absorber off, fluidized catalytic cracker and gas oil desulfurizer overhead fractionation.
68955–34–0	Gases (petroleum), straight-run naphtha catalytic reformer stabilizer overhead.
68955–35–1	Naphtha (petroleum), catalytic reformed.
68955–36–2	Residues (petroleum), steam-cracked, resinous.
68955–76–0	Aromatic hydrocarbons, C9–16, biphenyl deriv.-rich.
68955–96–4	Disulfides, dialkyl and di-Ph, naphtha sweetening.

TABLE 1—CASRNS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CASRN	Product
68956–47–8	Fuel oil, isoprene reject absorption.
68956–48–9	Fuel oil, residual, wastewater skimmings.
68956–52–5	Hydrocarbons, C4–8.
68956–54–7	Hydrocarbons, C4-unsatd.
68956–55–8	Hydrocarbons, C5-unsatd.
68956–70–7	Petroleum products, C5–12, reclaimed, wastewater treatment.
68988–79–4	Benzene, C10–12-alkyl derivs., distn. residues.
68988–99–8	Phenols, sodium salts, mixed with sulfur compounds, gasoline alk. scrubber residues.
68989–88–8	Gases (petroleum), crude distn. and catalytic cracking.
68990–35–2	Distillates (petroleum), arom., hydrotreated, dicyclopentadiene-rich.
68991–49–1	Alkanes, C10–13, arom.-free desulfurized.
68991–50–4	Alkanes, C14–17, arom.-free desulfurized.
68991–51–5	Alkanes, C10–13, desulfurized.
68991–52–6	Alkenes, C10–16.
69013–21–4	Fuel oil, pyrolysis.
69029–75–0	Oils, reclaimed.
69430–33–7	Hydrocarbons, C6–30.
70024–88–3	Ethene, thermal cracking products.
70528–71–1	Distillates (petroleum), heavy distillate solvent ext. heart-cut.
70528–72–2	Distillates (petroleum), heavy distillate solvent ext. vacuum overheads.
70528–73–3	Residues (petroleum), heavy distillate solvent ext. vacuum.
70592–76–6	Distillates (petroleum), intermediate vacuum.
70592–77–7	Distillates (petroleum), light vacuum.
70592–78–8	Distillates (petroleum), vacuum.
70592–79–9	Residues (petroleum), atm. tower, light.
70693–00–4	Hydrocarbon waxes (petroleum), oxidized, sodium salts.
70693–06–0	Aromatic hydrocarbons, C9–11.
70913–85–8	Residues (petroleum), solvent-extd. vacuum distilled atm. residuum.
70913–86–9	Alkanes, C18–70.
70955–08–7	Alkanes, C4–6.
70955–09–8	Alkenes, C13–14 .alpha.-.
70955–10–1	Alkenes, C15–18 .alpha.-.
70955–17–8	Aromatic hydrocarbons, C12–20.
71243–66–8	Hydrocarbon waxes (petroleum), clay-treated, microcryst., oxidized, potassium salts.
71302–82–4	Hydrocarbons, C5–8, houdry butadiene manuf. by-product.
71329–37–8	Residues (petroleum), catalytic cracking depropanizer, C4-rich.
71808–30–5	Tail gas (petroleum), thermal cracking absorber.
72230–71–8	Distillates (petroleum), cracked steam-cracked, C5–17 fraction.
72623–83–7	Lubricating oils (petroleum), C>25, hydrotreated bright stock-based.
72623–84–8	Lubricating oils (petroleum), C15–30, hydrotreated neutral oil-based, contg. solvent deasphalted residual oil.
72623–85–9	Lubricating oils (petroleum), C20–50, hydrotreated neutral oil-based, high-viscosity.
72623–86–0	Lubricating oils (petroleum), C15–30, hydrotreated neutral oil-based.
72623–87–1	Lubricating oils (petroleum), C20–50, hydrotreated neutral oil-based.
73138–65–5	Hydrocarbon waxes (petroleum), oxidized, magnesium salts.
92045–43–7	Lubricating oils (petroleum), hydrocracked non-arom. solvent deparaffined.
92045–58–4	Naphtha (petroleum), isomerization, C6-fraction.
92062–09–4	Slack wax (petroleum), hydrotreated.
93762–80–2	Alkenes, C15–18.
98859–55–3	Distillates (petroleum), oxidized heavy, compds. with diethanolamine.
98859–56–4	Distillates (petroleum), oxidized heavy, sodium salts.
101316–73–8	Lubricating oils (petroleum), used, non-catalytically refined.
164907–78–2	Extracts (petroleum), asphaltene-low vacuum residue solvent.
164907–79–3	Residues (petroleum), vacuum, asphaltene-low.
178603–63–9	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C10–25.
178603–64–0	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C15–30, branched and cyclic.
178603–65–1	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C20–40, branched and cyclic.
178603–66–2	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C25–55, branched and cyclic.
212210–93–0	Solvent naphtha (petroleum), heavy arom., distn. residues.
221120–39–4	Distillates (petroleum), cracked steam-cracked, C5–12 fraction.
445411–73–4	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C10–25, branched and cyclic.

(2) *Specific exempted chemical substances*—(i) *Exemption.* EPA has determined that, at this time, the information in § 711.15(b)(4) associated with the chemical substances listed in

paragraph (b)(2)(iv) of this section is of low current interest.

(ii) *Considerations.* In making its determination of whether this partial exemption should apply to a particular chemical substance, EPA will consider the totality of information available for the chemical substance in question, including but not limited to, one or more of the following considerations:

(A) Whether the chemical substance qualifies or has qualified in past IUR collections for the reporting of the information described in § 711.15(b)(4).

(B) The chemical substance's chemical and physical properties or potential for persistence, bioaccumulation, health effects, or environmental effects (considered independently or together).

(C) The information needs of EPA, other Federal agencies, Tribes, States, and local governments, as well as members of the public.

(D) The availability of other complementary risk screening information.

(E) The availability of comparable processing and use information.

(F) Whether the potential risks of the chemical substance are adequately managed.

(iii) *Amendments.* EPA may amend the chemical substance list in paragraph (b)(2)(iv) of this section on its own initiative or in response to a request from the public based on EPA's determination of whether the information in § 711.15(b)(4) is of low interest.

(A) Any person may request that EPA amend the chemical substance list in Table 2 in paragraph (b)(2)(iv) of this section. Your request must be in writing and must be submitted to the following address: OPPT IUR Submission Coordinator (7407M), Attention: Inventory Update Reporting, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Requests must identify the chemical substance in question, as well as its CASRN or other chemical identification number as identified in § 711.15(b)(3)(i), and must contain a written rationale for the request that provides sufficient specific information, addressing the considerations listed in § 711.6(b)(2)(ii), including cites and relevant documents, to demonstrate to EPA that the collection of the information in § 711.15(b)(4) for the chemical substance in question either is or is not of low current interest. If a request related to a particular chemical substance is resubmitted, any subsequent request must clearly identify new information contained in the request. EPA may request other information that it believes necessary to evaluate the request. EPA will issue a written response to each request within 120 days of receipt of the request, and will maintain copies of these responses in a docket that will be established for each reporting cycle.

(B) As needed, the Agency will initiate rulemaking to make revisions to Table 2 in paragraph (b)(2)(iv) of this section.

(C) To assist EPA in reaching a decision regarding a particular request prior to a given principal reporting year, requests must be submitted to EPA no later than 12 months prior to the start of the next principal reporting year.

(iv) *List of chemical substances.* EPA has designated the chemical substances listed in Table 2 of this paragraph by CASRN, as partially exempt from reporting under the IUR.

TABLE 2—CASRN OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES

CASRN	Chemical
50–70–4	*D*-glucitol.
50–81–7	*L*-ascorbic acid.
50–99–7	*D*-glucose.
56–81–5	1,2,3-Propanetriol.
56–87–1	*L*-lysine.
57–50–1	.alpha.-*D*-Glucopyranoside, .beta.-*D*-fructofuranosyl.
58–95–7	2H-1-Benzopyran-6-ol, 3,4-dihydro-2,5,7,8-tetramethyl-2-[(4R,8R)-4,8,12- trimethyltridecyl]-, acetate, (2R)-.
59–02–9	2H-1-Benzopyran-6-ol, 3,4-dihydro-2,5,7,8-tetramethyl-2-[(4R,8R)-4,8,12- trimethyltridecyl]-, (2R)-.
59–51–8	Methionine.
69–65–8	*D*-mannitol.
87–79–6	*L*-sorbose.
87–99–0	Xylitol.
96–10–6	Aluminum, chlorodiethyl-.
97–93–8	Aluminum, triethyl-.
100–99–2	Aluminum, tris(2-methylpropyl)-.
123–94–4	Octadecanoic acid, 2,3-dihydroxypropyl ester.
124–38–9	Carbon dioxide.
137–08–6	.beta.-Alanine, N-[(2R)-2,4-dihydroxy-3,3-dimethyl-1-oxobutyl]-, calcium alt (2:1).
142–47–2	*L*-glutamic acid, monosodium salt.
150–30–1	Phenylalanine.
563–43–9	Aluminum, dichloroethyl-.
1070–00–4	Aluminum, trioctyl-.
1116–70–7	Aluminum, tributyl-.
1116–73–0	Aluminum, trihexyl-.
1191–15–7	Aluminum, hydrobis(2-methylpropyl)-.
1317–65–3	Limestone.
1333–74–0	Hydrogen.
1592–23–0	Octadecanoic acid, calcium salt.
7440–37–1	Argon.
7440–44–0	Carbon.
7727–37–9	Nitrogen.
7782–42–5	Graphite.
7782–44–7	Oxygen.
8001–21–6	Sunflower oil.
8001–22–7	Soybean oil.
8001–23–8	Safflower oil.

TABLE 2—CASRN OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES—Continued

CASRN	Chemical
8001–26–1	Linseed oil.
8001–29–4	Cottonseed oil.
8001–30–7	Corn oil.
8001–31–8	Coconut oil.
8001–78–3	Castor oil, hydrogenated.
8001–79–4	Castor oil.
8002–03–7	Peanut oil.
8002–13–9	Rape oil.
8002–43–5	Lecithins.
8002–75–3	Palm oil.
8006–54–0	Lanolin.
8016–28–2	Lard, oil.
8016–70–4	Soybean oil, hydrogenated.
8021–99–6	Charcoal, bone.
8029–43–4	Syrups, hydrolyzed starch.
11103–57–4	Vitamin A.
12075–68–2	Aluminum, di-.mu.-chlorochlorotriethyldi-.
12542–85–7	Aluminum, trichlorotrimethyldi-.
16291–96–6	Charcoal.
26836–47–5	*D*-glucitol, monooctadecanoate.
61789–44–4	Fatty acids, castor-oil.
61789–97–7	Tallow.
61789–99–9	Lard.
64147–40–6	Castor oil, dehydrated.
64755–01–7	Fatty acids, tallow, calcium salts.
65996–63–6	Starch, acid-hydrolyzed.
65996–64–7	Starch, enzyme-hydrolyzed.
67701–01–3	Fatty acids, C12–18.
68002–85–7	Fatty acids, C14–22 and C16–22-unsatd.
68131–37–3	Syrups, hydrolyzed starch, dehydrated.
68188–81–8	Grease, poultry.
68308–36–1	Soybean meal.
68308–54–3	Glycerides, tallow mono-, di- and tri-, hydrogenated.
68334–00–9	Cottonseed oil, hydrogenated.
68334–28–1	Fats and glyceridic oils, vegetable, hydrogenated.
68409–76–7	Bone meal, steamed.
68424–45–3	Fatty acids, linseed-oil.
68424–61–3	Glycerides, C16–18 and C18-unsatd. mono- and di-.
68425–17–2	Syrups, hydrolyzed starch, hydrogenated
68439–86–1	Bone, ash.
68442–69–3	Benzene, mono-C10–14-alkyl derivs.
68476–78–8	Molasses.
68514–27–2	Grease, catch basin.
68514–74–9	Palm oil, hydrogenated.
68525–87–1	Corn oil, hydrogenated.
68648–87–3	Benzene, C10–16-alkyl derivs.
68918–42–3	Soaps, stocks, soya.
68952–94–3	Soaps, stocks, vegetable-oil.
68956–68–3	Fats and glyceridic oils, vegetable.
68989–98–0	Fats and glyceridic oils, vegetable, residues.
73138–67–7	Lard, hydrogenated.
120962–03–0	Canola oil.
129813–58–7	Benzene, mono-C10–13-alkyl derivs.
129813–59–8	Benzene, mono-C12–14-alkyl derivs.
129813–60–1	Benzene, mono-C14–16-alkyl derivs.

§ 711.8 Persons who must report.

Except as provided in §§ 711.9 and 711.10, the following persons are subject to the requirements of this part. Persons must determine whether they must report under this section for each chemical substance that they manufacture (including import) at an individual site.

(a) *Persons subject to recurring reporting*—(1) For the 2012 submission period, any person who manufactured (including imported) for commercial purposes 25,000 lb (11,340 kilogram (kg)) or more of a chemical substance described in § 711.5 at any single site owned or controlled by that person during the principal reporting year (i.e., calendar year 2011) is subject to reporting.

(2) For the submission periods subsequent to the 2012 submission period, any person who manufactured (including imported) for commercial purposes 25,000 lb (11,340 kg) or more of a chemical substance described in § 711.5 at any single site owned or controlled by that person during any calendar year since the last principal reporting year (*e.g.,* for the 2016 submission period, consider calendar years 2012, 2013, 2014, and 2015, given that 2011 was the last principal reporting year).

(b) *Exceptions.* For the 2016 submission period and subsequent

submission periods, any person who manufactured (including imported) for commercial purposes any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 5(a)(2), 5(b)(4), or 6, or is the subject of an order in effect under TSCA section 5(e) or 5(f), or is the subject of relief that has been granted under a civil action under TSCA section 5 or 7 is subject to reporting as described in § 711.8(a), except that the applicable production volume threshold is 2,500 lb (1,134 kg).

§ 711.9 Persons not subject to this part.

A person described in § 711.8 is not subject to the requirements of this part if that person qualifies as a small manufacturer as that term is defined in 40 CFR 704.3. Notwithstanding this exclusion, a person who qualifies as a small manufacturer is subject to this part with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or is the subject of an order in effect under TSCA section 5(e), or is the subject of relief that has been granted under a civil action under TSCA section 5 or 7.

§ 711.10 Activities for which reporting is not required.

A person described in § 711.8 is not subject to the requirements of this part with respect to any chemical substance described in § 711.5 that the person solely manufactured or imported under the following circumstances:

(a) The person manufactured or imported the chemical substance described in § 711.5 solely in small quantities for research and development.

(b) The person imported the chemical substance described in § 711.5 as part of an article.

(c) The person manufactured the chemical substance described in § 711.5 in a manner described in 40 CFR 720.30(g) or (h).

§ 711.15 Reporting information to EPA.

For the 2012 submission period, any person who must report under this part, as described in § 711.8, must submit the information described in this section for each chemical substance described in § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lb (11,340 kg) or more at any one site during the principal reporting year (*i.e.,* calendar year 2011). For the submission periods subsequent to the 2012 submission period, any person who must report under this part, as described in § 711.8, must submit the information described in this section for each chemical substance described in § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lb (11,340 kg) or more (or in an amount of 2,500 lb (1,134 kg) or more for chemical substances subject to the rules, orders, or actions described in § 711.8(b)) at any one site during any calendar year since the last principal reporting year (*e.g.,* for the 2016 submission period, consider calendar years 2012, 2013, 2014, and 2015, because 2011 was the last principal reporting year). The principal reporting year for each submission period is the previous calendar year (*e.g.,* the principal reporting year for the 2016 submission period is calendar year 2015). For all submission periods, a separate report must be submitted for each chemical substance at each site for which the submitter is required to report. A submitter of information under this part must report information as described in this section to the extent that such information is known to or reasonably ascertainable by that person.

(a) *Reporting information to EPA.* Any person who reports information to EPA must do so using the e-CDRweb reporting tool provided by EPA at the address set forth in § 711.35. The submission must include all information described in paragraph (b) of this section. Persons must submit a separate Form U for each site for which the person is required to report. The e-CDRweb reporting tool is described in the instructions available from EPA at the Web site set forth in § 711.35.

(b) *Information to be reported.* For the 2012 submission period, manufacturers (including importers) of a reportable chemical substance in an amount of 25,000 lb (11,340 kg) or more at a site during the principal reporting year (*i.e.,* 2011) must report the information described in paragraphs (b)(1), (b)(2), and (b)(3) of this section. For the 2012 submission period, manufacturers (including importers) of a reportable chemical substance in an amount of 100,000 lb (45,359 kg) or more at a site during the principal reporting year (*i.e.,* 2011) must additionally report the information described in paragraph (b)(4) of this section. For submission periods subsequent to the 2012 submission period, the information described in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section must be reported for each chemical substance manufactured (including imported) in an amount of 25,000 lb (11,340 kg) or more (or in an amount of 2,500 lb (1,134 kg) or more for chemical substances subject to the rules, orders, or actions described in § 711.8(b)) at any one site during any calendar year since the last principal reporting year. The requirement to report information described in paragraph (b)(4) of this section is subject to exemption as described in § 711.6.

(1) *A certification statement signed and dated by an authorized official of the submitter company.* The authorized official must certify that the submitted information has been completed in compliance with the requirements of this part and that the confidentiality claims made on the Form U are true and correct. The certification must be signed and dated by the authorized official for the submitter company, and provide that person's name, official title, and e-mail address.

(2) *Company and plant site information.* The following currently correct company and plant site information must be reported for each site at which a reportable chemical substance is manufactured (including imported) above the applicable production volume threshold, as described in this section (see § 711.3 for the ''site'' for importers):

(i) The U.S. parent company name, address, and Dun and Bradstreet D–U–N–S® (D&B) number. A submitter under this part must obtain a D&B number for the U.S. parent company if none exists.

(ii) The name of a person who will serve as technical contact for the submitter company, and who will be able to answer questions about the information submitted by the company to EPA, the contact person's full mailing address, telephone number, and e-mail address.

(iii) The name and full street address of each site. A submitter under this part must include the appropriate D&B number for each plant site reported, and the county or parish (or other jurisdictional indicator) in which the plant site is located. A submitter under this part must obtain a D&B number for the site reported if none exists.

(3) *Chemical-specific information.* The following chemical-specific information must be reported for each reportable chemical substance manufactured (including imported) above the applicable production volume threshold, as described in paragraph (b) of this section:

(i) The specific, currently correct CA Index name as used to list the chemical substance on the TSCA Inventory and the correct corresponding CASRN for each reportable chemical substance at each site. A submitter under this part may use an EPA-designated TSCA Accession Number for a chemical substance in lieu of a CASRN when a CASRN is not known to or reasonably

ascertainable by the submitter. Submitters who wish to report chemical substances listed on the confidential portion of the TSCA Inventory will need to report the chemical substance using a TSCA Accession Number.

In addition to reporting the number itself, submitters must specify the type of number they are reporting by selecting from among the codes in Table 3 of this paragraph.

TABLE 3—CODES TO SPECIFY TYPE OF CHEMICAL IDENTIFYING NUMBER

Code	Number type
A	TSCA Accession Number.
C	Chemical Abstracts Service Registry Number (CASRN).

(A) If an importer submitting a report cannot provide the information specified in § 711.15(b)(3)(i) because it is unknown to the importer and claimed as confidential by the supplier of the chemical substance or mixture, the importer must use e-CDRweb to ask the supplier to provide the correct chemical identity information directly to EPA in a joint submission. Such request must include instructions for submitting chemical identity information electronically, using e-CDRweb and CDX (see § 711.35), and for clearly referencing the importer's submission. Contact information for the supplier, a trade name or other designation for the chemical substance or mixture, and a copy of the request to the supplier must be included with the importer's submission respecting the chemical substance.

(B) If a manufacturer submitting a report cannot provide the information specified in § 711.15(b)(3)(i) because the reportable chemical substance is manufactured using a reactant having a specific chemical identity that is unknown to the manufacturer and claimed as confidential by its supplier, the manufacturer must use e-CDRweb to ask the supplier of the confidential reactant to provide the correct chemical identity of the confidential reactant directly to EPA in a joint submission. Such request must include instructions for submitting chemical identity information electronically using e-CDRweb and CDX (see § 711.35), and for clearly referencing the manufacturer's submission. Contact information for the supplier, a trade name or other designation for the chemical substance, and a copy of the request to the supplier must be included with the importer's submission respecting the chemical substance.

(C) EPA will only accept joint submissions that are submitted electronically using e-CDRweb and CDX (see § 711.35) and that clearly reference the primary submission to which they refer.

(ii) For the principal reporting year only, a statement indicating, for each reportable chemical substance at each site, whether the chemical substance is manufactured in the United States, imported into the United States, or both manufactured in the United States and imported into the United States.

(iii) For the principal reporting year, the total annual volume (in pounds) of each reportable chemical substance domestically manufactured or imported at each site. The total annual domestically manufactured volume (not including imported volume) and the total annual imported volume must be separately reported. These amounts must be reported to two significant figures of accuracy. In addition, for the 2012 submission period only, the total annual volume (domestically manufactured plus imported volumes in pounds) of each reportable chemical substance at each site during calendar year 2010. In addition, for submission periods subsequent to the 2012 submission period, the total annual volume (domestically manufactured plus imported volumes in pounds) of each reportable chemical substance at each site for each complete calendar year since the last principal reporting year.

(iv) For the principal reporting year only, the volume used on site and the volume directly exported of each reportable chemical substance domestically manufactured or imported at each site. These amounts must be reported to two significant figures of accuracy.

(v) For the principal reporting year only, a designation indicating, for each imported reportable chemical substance at each site, whether the imported chemical substance is physically present at the reporting site.

(vi) For the principal reporting year only, a designation indicating, for each reportable chemical substance at each site, whether the chemical substance is being recycled, remanufactured, reprocessed, reused, or otherwise used for a commercial purpose instead of being disposed of as a waste or included in a waste stream.

(vii) For the principal reporting year only, the total number of workers reasonably likely to be exposed to each reportable chemical substance at each site. For each reportable chemical substance at each site, the submitter must select from among the ranges of workers listed in Table 4 of this paragraph and report the corresponding code (*i.e.,* W1 through W8):

TABLE 4—CODES FOR REPORTING NUMBER OF WORKERS REASONABLY LIKELY TO BE EXPOSED

Code	Range
W1	Fewer than 10 workers.
W2	At least 10 but fewer than 25 workers.
W3	At least 25 but fewer than 50 workers.
W4	At least 50 but fewer than 100 workers.
W5	At least 100 but fewer than 500 workers.
W6	At least 500 but fewer than 1,000 workers.
W7	At least 1,000 but fewer than 10,000 workers.
W8	At least 10,000 workers.

(viii) For the principal reporting year only, the maximum concentration, measured by percentage of weight, of each reportable chemical substance at the time it is sent off-site from each site. If the chemical substance is site-limited, you must report the maximum concentration, measured by percentage of weight of the reportable chemical substance at the time it is reacted on-site to produce a different chemical substance. This information must be reported regardless of the physical form(s) in which the chemical substance is sent off-site/reacted on-site. For each chemical substance at each site, select the maximum concentration of the chemical substance from among the ranges listed in Table 5 of this paragraph and report the corresponding code (*i.e.,* M1 through M5):

TABLE 5—CODES FOR REPORTING MAXIMUM CONCENTRATION OF CHEMICAL SUBSTANCE

Code	Concentration range (% weight)
M1	Less than 1% by weight.
M2	At least 1 but less than 30% by weight.
M3	At least 30 but less than 60% by weight.
M4	At least 60 but less than 90% by weight.
M5	At least 90% by weight.

(ix) For the principal reporting year only, the physical form(s) of the reportable chemical substance as it is sent off-site from each site. If the chemical substance is site-limited, you must report the physical form(s) of the reportable chemical substance at the time it is reacted on-site to produce a different chemical substance. For each

chemical substance at each site, the submitter must report as many physical forms as applicable from among the physical forms listed in this unit:

(A) Dry powder.
(B) Pellets or large crystals.
(C) Water- or solvent-wet solid.
(D) Other solid.
(E) Gas or vapor.
(F) Liquid.

(x) For the principal reporting year only, submitters must report the percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance, reported in response to paragraph (b)(3)(iii) of this section, that is associated with each physical form reported under paragraph (b)(3)(ix) of this section.

(4) *Chemical-specific information related to processing and use.* The following chemical-specific information must be reported for each reportable chemical substance manufactured (including imported) above the applicable production volume threshold, as described in this section. Persons subject to paragraph (b)(4) of this section must report the information described in paragraphs (b)(4)(i) and (b)(4)(ii) of this section for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, *etc.*). Information reported in response to this paragraph must be reported for the principal reporting year only and only to the extent that it is known to or reasonably ascertainable by the submitter. Information required to be reported under this paragraph is limited to domestic (*i.e.,* within the customs territory of the United States) processing and use activities. If information responsive to a given data requirement under this paragraph, including information in the form of an estimate, is not known or reasonably ascertainable, the submitter is not required to respond to the requirement.

(i) *Industrial processing and use information*—(A) A designation indicating the type of industrial processing or use operation(s) at each site that receives a reportable chemical substance from the submitter site directly or indirectly (whether the recipient site(s) are controlled by the submitter site or not). For each chemical substance, report the letters which correspond to the appropriate processing or use operation(s) listed in Table 6 of this paragraph. A particular designation may need to be reported more than once, to the extent that a submitter reports more than one sector (under paragraph (b)(4)(i)(B) of this section) that applies to a given designation under this paragraph.

TABLE 6—CODES FOR REPORTING TYPE OF INDUSTRIAL PROCESSING OR USE OPERATION

Designation	Operation
PC	Processing as a reactant.
PF	Processing—incorporation into formulation, mixture, or reaction product.
PA	Processing—incorporation into article.
PK	Processing—repackaging.
U	Use—non-incorporative activities.

(B) A code indicating the sector(s) that best describe the industrial activities associated with each industrial processing or use operation reported under paragraph (b)(4)(i)(A) of this section. For each chemical substance, report the code that corresponds to the appropriate sector(s) listed in Table 7 of this paragraph. A particular sector code may need to be reported more than once, to the extent that a submitter reports more than one industrial function code (under paragraph (b)(4)(i)(C) of this section) that applies to a given sector code under this paragraph.

TABLE 7—CODES FOR REPORTING INDUSTRIAL SECTORS

Code	Sector description
IS1	Agriculture, forestry, fishing, and hunting.
IS2	Oil and gas drilling, extraction, and support activities.
IS3	Mining (except oil and gas) and support activities.
IS4	Utilities.
IS5	Construction.
IS6	Food, beverage, and tobacco product manufacturing.
IS7	Textiles, apparel, and leather manufacturing.
IS8	Wood product manufacturing.
IS9	Paper manufacturing.
IS10	Printing and related support activities.
IS11	Petroleum refineries.
IS12	Asphalt paving, roofing, and coating materials manufacturing.
IS13	Petroleum lubricating oil and grease manufacturing.
IS14	All other petroleum and coal products manufacturing.
IS15	Petrochemical manufacturing.
IS16	Industrial gas manufacturing.
IS17	Synthetic dye and pigment manufacturing.
IS18	Carbon black manufacturing.
IS19	All other basic inorganic chemical manufacturing.
IS20	Cyclic crude and intermediate manufacturing.
IS21	All other basic organic chemical manufacturing.
IS22	Plastics material and resin manufacturing.
IS23	Synthetic rubber manufacturing.
IS24	Organic fiber manufacturing.
IS25	Pesticide, fertilizer, and other agricultural chemical manufacturing.
IS26	Pharmaceutical and medicine manufacturing.
IS27	Paint and coating manufacturing.
IS28	Adhesive manufacturing.
IS29	Soap, cleaning compound, and toilet preparation manufacturing.
IS30	Printing ink manufacturing.
IS31	Explosives manufacturing.
IS32	Custom compounding of purchased resins.
IS33	Photographic film, paper, plate, and chemical manufacturing.

TABLE 7—CODES FOR REPORTING INDUSTRIAL SECTORS—Continued

Code	Sector description
IS34	All other chemical product and preparation manufacturing.
IS35	Plastics product manufacturing.
IS36	Rubber product manufacturing.
IS37	Non-metallic mineral product manufacturing (includes cement, clay, concrete, glass, gypsum, lime, and other non-metallic mineral product manufacturing).
IS38	Primary metal manufacturing.
IS39	Fabricated metal product manufacturing.
IS40	Machinery manufacturing.
IS41	Computer and electronic product manufacturing.
IS42	Electrical equipment, appliance, and component manufacturing.
IS43	Transportation equipment manufacturing.
IS44	Furniture and related product manufacturing.
IS45	Miscellaneous manufacturing.
IS46	Wholesale and retail trade.
IS47	Services.
IS48	Other (requires additional information).

(C) For each sector reported under paragraph (b)(4)(i)(B) of this section, code(s) from Table 8 of this paragraph must be selected to designate the industrial function category(ies) that best represents the specific manner in which the chemical substance is used. A particular industrial function category may need to be reported more than once, to the extent that a submitter reports more than one industrial processing or use operation/sector combination (under paragraphs (b)(4)(i)(A) and (b)(4)(i)(B) of this section) that applies to a given industrial function category under this paragraph. If more than 10 unique combinations of industrial processing or use operations/sector/industrial function categories apply to a chemical substance, submitters need only report the 10 unique combinations for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume for that chemical substance, measured by weight. If none of the listed industrial function categories accurately describes a use of a chemical substance, the category ''Other'' may be used, and must include a description of the use.

TABLE 8—CODES FOR REPORTING INDUSTRIAL FUNCTION CATEGORIES

Code	Category
U001	Abrasives.
U002	Adhesives and sealant chemicals.
U003	Adsorbents and absorbents.
U004	Agricultural chemicals (non-pesticidal).
U005	Anti-adhesive agents.
U006	Bleaching agents.
U007	Corrosion inhibitors and anti-scaling agents.
U008	Dyes.
U009	Fillers.
U010	Finishing agents.
U011	Flame retardants.
U012	Fuels and fuel additives.
U013	Functional fluids (closed systems).
U014	Functional fluids (open systems).
U015	Intermediates.
U016	Ion exchange agents.
U017	Lubricants and lubricant additives.
U018	Odor agents.
U019	Oxidizing/reducing agents.
U020	Photosensitive chemicals.
U021	Pigments.
U022	Plasticizers.
U023	Plating agents and surface treating agents.
U024	Process regulators.
U025	Processing aids, specific to petroleum production.
U026	Processing aids, not otherwise listed.
U027	Propellants and blowing agents.
U028	Solids separation agents.
U029	Solvents (for cleaning or degreasing).
U030	Solvents (which become part of product formulation or mixture).
U031	Surface active agents.
U032	Viscosity adjustors.
U033	Laboratory chemicals.
U034	Paint additives and coating additives not described by other categories.
U999	Other (specify).

(D) The estimated percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance associated with each combination of industrial processing or use operation, sector, and industrial function category. Where a particular combination of industrial processing or use operation, sector, and industrial function category accounts for less than 5% of the submitter's site's total production volume of a reportable chemical substance, the percentage must not be rounded off to 0% if the production volume attributable to that industrial processing or use operation, sector, and industrial function category combination is 25,000 lb (11,340 kg) or more during the reporting year. Instead, in such a case, submitters must report the percentage, rounded off to the closest 1%, of the submitter's site's total production volume of the reportable chemical substance associated with the particular combination of industrial processing or use operation, sector, and industrial function category.

(E) For each combination of industrial processing or use operation, sector, and industrial function category, the submitter must estimate the number of sites at which each reportable chemical substance is processed or used. For each combination associated with each chemical substance, the submitter must select from among the ranges of sites listed in Table 9 of this paragraph and report the corresponding code (*i.e.,* S1 through S7):

TABLE 9—CODES FOR REPORTING NUMBERS OF SITES

Code	Range
S1	Fewer than 10 sites.
S2	At least 10 but fewer than 25 sites.
S3	At least 25 but fewer than 100 sites.
S4	At least 100 but fewer than 250 sites.
S5	At least 250 but fewer than 1,000 sites.
S6	At least 1,000 but fewer than 10,000 sites.
S7	At least 10,000 sites.

(F) For each combination of industrial processing or use operation, sector, and industrial function category, the submitter must estimate the number of workers reasonably likely to be exposed to each reportable chemical substance. For each combination associated with each chemical substance, the submitter must select from among the worker ranges listed in paragraph (b)(3)(ii) of this section and report the corresponding code (*i.e.,* W1 though W8).

(ii) *Consumer and commercial use information*—(A) Using the codes listed in Table 10 of this paragraph, submitters must designate the consumer and commercial product category or categories that best describe the consumer and commercial products in which each reportable chemical substance is used (whether the recipient site(s) are controlled by the submitter site or not). If more than 10 codes apply to a chemical substance, submitters need only report the 10 codes for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume for that chemical, measured by weight. If none of the listed consumer and commercial product categories accurately describes the consumer and commercial products in which each reportable chemical substance is used, the category ''Other'' may be used, and must include a description of the use.

TABLE 10—CODES FOR REPORTING CONSUMER AND COMMERCIAL PRODUCT CATEGORIES

Code	Category
Chemical Substances in Furnishing, Cleaning, Treatment Care Products	
C101	Floor coverings.
C102	Foam seating and bedding products.
C103	Furniture and furnishings not covered elsewhere.
C104	Fabric, textile, and leather products not covered elsewhere.
C105	Cleaning and furnishing care products.
C106	Laundry and dishwashing products.
C107	Water treatment products.
C108	Personal care products.
C109	Air care products.
C110	Apparel and footwear care products.
Chemical Substances in Construction, Paint, Electrical, and Metal Products	
C201	Adhesives and sealants.
C202	Paints and coatings.
C203	Building/construction materials—wood and engineered wood products.
C204	Building/construction materials not covered elsewhere.
C205	Electrical and electronic products.
C206	Metal products not covered elsewhere.
C207	Batteries.
Chemical Substances in Packaging, Paper, Plastic, Toys, Hobby Products	
C301	Food packaging.
C302	Paper products.
C303	Plastic and rubber products not covered elsewhere.
C304	Toys, playground, and sporting equipment.
C305	Arts, crafts, and hobby materials.
C306	Ink, toner, and colorant products.
C307	Photographic supplies, film, and photochemicals.
Chemical Substances in Automotive, Fuel, Agriculture, Outdoor Use Products	
C401	Automotive care products.
C402	Lubricants and greases.

TABLE 10—CODES FOR REPORTING CONSUMER AND COMMERCIAL PRODUCT CATEGORIES—Continued

Code	Category
C403	Anti-freeze and de-icing products.
C404	Fuels and related products.
C405	Explosive materials.
C406	Agricultural products (non-pesticidal).
C407	Lawn and garden care products.
Chemical Substances in Products not Described by Other Codes	
C980	Non-TSCA use.
C909	Other (specify).

(B) An indication, within each consumer and commercial product category reported under paragraph (b)(4)(ii)(A) of this section, whether the use is a consumer or a commercial use.

(C) Submitters must determine, within each consumer and commercial product category reported under paragraph (b)(4)(ii)(A) of this section, whether any amount of each reportable chemical substance manufactured (including imported) by the submitter is present in (for example, a plasticizer chemical substance used to make pacifiers) or on (for example, as a component in the paint on a toy) any consumer products intended for use by children age 14 or younger, regardless of the concentration of the chemical substance remaining in or on the product. Submitters must select from the following options: The chemical substance is used in or on any consumer products intended for use by children, the chemical substance is not used in or on any consumer products intended for use by children, or information as to whether the chemical substance is used in or on any consumer products intended for use by children is not known to or reasonably ascertainable by the submitter.

(D) The estimated percentage, rounded off to the closest 10%, of the submitter's site's total production volume of the reportable chemical substance associated with each consumer and commercial product category. Where a particular consumer and commercial product category accounts for less than 5% of the total production volume of a reportable chemical substance, the percentage must not be rounded off to 0% if the production volume attributable to that commercial and consumer product category is 25,000 lb (11,340 kg) or more during the reporting year. Instead, in such a case, submitters must report the percentage, rounded off to the closest 1%, of the submitter's site's total production volume of the reportable chemical substance associated with the particular consumer and commercial product category.

(E) Where the reportable chemical substance is used in consumer or commercial products, the estimated typical maximum concentration, measured by weight, of the chemical substance in each consumer and commercial product category reported under paragraph (b)(4)(ii)(A) of this section. For each chemical substance in each commercial and consumer product category reported under paragraph (b)(4)(ii)(A) of this section, submitters must select from among the ranges of concentrations listed in Table 5 in paragraph (b)(3)(viii) of this section and report the corresponding code (*i.e.,* M1 through M5).

(F) Where the reportable chemical substance is used in a commercial product, the submitter must estimate the number of commercial workers reasonably likely to be exposed to each reportable chemical substance. For each combination associated with each substance, the submitter must select from among the worker ranges listed in Table 4 in paragraph (b)(3)(vii) of this section and report the corresponding code (*i.e.,* W1 though W8).

§ 711.20 When to report.

All information reported to EPA in response to the requirements of this part must be submitted during an applicable submission period. For the 2012 IUR, the submission period is from February 1, 2012 to June 30, 2012. Subsequent recurring submission periods are from June 1 to September 30 at 4-year intervals, beginning in 2016. In each submission period, any person described in § 711.8 must report as described in this part.

§ 711.22 Duplicative reporting.

(a) *With regard to TSCA section 8(a) rules.* Any person subject to the requirements of this part who previously has complied with reporting requirements of a rule under TSCA section 8(a) by submitting the information described in § 711.15 for a chemical substance described in § 711.5 to EPA, and has done so within 1 year of the start of a submission period described in § 711.20, is not required to report again on the manufacture of that chemical substance at that site during that submission period.

(b) *With regard to importers.* This part requires that only one report be submitted on each import transaction involving a chemical substance described in § 711.5. When two or more persons are involved in a particular import transaction and each person meets the Agency's definition of ''importer'' as set forth in 40 CFR 704.3, they may determine among themselves who should submit the required report; if no report is submitted as required under this part, EPA will hold each such person liable for failure to report.

(c) *Toll manufacturers and persons contracting with a toll manufacturer.* This part requires that only one report per site be submitted on each chemical substance described in § 711.5. When a company contracts with a toll manufacturer to manufacture a chemical substance, and each party meets the Agency's definition of ''manufacturer'' as set forth in § 711.3, they may determine among themselves who should submit the required report for that site. However, both the contracting company and the toll manufacturer are liable if no report is made.

§ 711.25 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this part must retain records that document any information reported to EPA. Records relevant to reporting during a submission period must be retained for a period of 5 years beginning on the last day of the submission period. Submitters are encouraged to retain their records longer than 5 years to ensure that past records are available as a reference when new submissions are being generated.

§ 711.30 Confidentiality claims.

(a) *Confidentiality claims.* Any person submitting information under this part may assert a business confidentiality claim for the information at the time it is submitted. Any such confidentiality claims must be made at the time the information is submitted. Confidentiality claims cannot be made when a response is left blank or designated as not known or reasonably ascertainable. These claims will apply only to the information submitted with the claim. New confidentiality claims, if appropriate, must be asserted with regard to information submitted during a different submission period. Guidance for asserting confidentiality claims is provided in the instructions identified in § 711.35. Information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in 40 CFR part 2.

(b) *Chemical identity.* A person may assert a claim of confidentiality for the chemical identity of a specific chemical substance only if the identity of that chemical substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that chemical substance under this part. The following steps must be taken to assert a claim of confidentiality for the identity of a reportable chemical substance:

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official.

(i) What harmful effects to your competitive position, if any, or to your supplier's competitive position, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this part? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(ii) How long should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(iii) Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential?

(iv) Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose by anyone?

(v) Is the fact that the chemical substance is being manufactured (including imported) for a commercial purpose available to the public, for example in technical journals, libraries, or State, local, or Federal agency public files?

(vi) What measures have been taken to prevent undesired disclosure of the fact that the chemical substance is being manufactured (including imported) for a commercial purpose?

(vii) To what extent has the fact that this chemical substance is manufactured (including imported) for commercial purposes been revealed to others? What precautions have been taken regarding these disclosures? Have there been public disclosures or disclosures to competitors?

(viii) Does this particular chemical substance leave the site of manufacture (including import) in any form, *e.g.,* as product, effluent, emission? If so, what measures have been taken to guard against the discovery of its identity?

(ix) If the chemical substance leaves the site in a product that is available to the public or your competitors, can the chemical substance be identified by analysis of the product?

(x) For what purpose do you manufacture (including import) the chemical substance?

(xi) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

(2) If any of the information contained in the answers to the questions listed in paragraph (b)(1) of this section is asserted to contain confidential business information (CBI), the submitter must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as ''confidential business information,'' ''proprietary,'' or ''trade secret.''

(c) *Site identity.* A submitter may assert a claim of confidentiality for a site only if the linkage of the site with a reportable chemical substance is confidential and not publicly available. The following steps must be taken to assert a claim of confidentiality for a site identity:

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official:

(i) Has site information been linked with a chemical identity in any other Federal, State, or local reporting scheme? For example, is the chemical identity linked to a facility in a filing under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 311, namely through a Material Safety Data Sheet (MSDS)? If so, identify all such schemes. Was the linkage claimed as confidential in any of these instances?

(ii) What harmful effect, if any, to your competitive position do you think would result from the identity of the site and the chemical substance being disclosed in connection with reporting under this part? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(2) If any of the information contained in the answers to the questions listed in paragraph (c)(1) of this section is asserted to contain CBI, the submitter must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as ''confidential business information,'' ''proprietary,'' or ''trade secret.''

(d) *Processing and use information.* A submitter may assert a claim of confidentiality for each data element required by § 711.15(b)(4) only if the linkage of the information with a reportable chemical substance is confidential and not publicly available. The following steps must be taken to assert a claim of confidentiality for each data element, individually, required by § 711.15(b)(4):

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official:

(i) Is the identified use of this chemical substance publicly known? For example, is information on the use available in advertisements or other marketing materials, professional journals or other similar materials, or in non-confidential mandatory or voluntary government filings or publications? Has your company ever provided use information on the chemical substance that was not claimed as confidential?

(ii) What harmful effect, if any, to your competitive position or to your customer's competitive position do you think would result from the information reported as required by § 711.15(b)(4) and the chemical substance being disclosed in connection with reporting under this part? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the substantial harmful effects?

(2) If any of the information contained in the answers to the questions listed in paragraph (d)(1) of this section is asserted to contain CBI, the submitter

must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as ''confidential business information,'' ''proprietary,'' or ''trade secret.''

(e) *No claim of confidentiality.* If no claim of confidentiality is indicated on Form U submitted to EPA under this part; if Form U lacks the certification required by § 711.15(b)(1); if confidentiality claim substantiation required under paragraphs (b), (c), and (d) of this section is not submitted with Form U; or if the identity of a chemical substance listed on the non-confidential portion of the Master Inventory File is claimed as confidential, EPA may make the information available to the public without further notice to the submitter.

§ 711.35 Electronic filing.

(a) You must use e-CDRweb to complete and submit Form U (EPA Form 7740–8). Submissions may only be made as set forth in this section.

(b) Submissions must be sent electronically to EPA via CDX.

(c) Access e-CDRweb and instructions, as follows:

(1) *By Web site.* Go to the EPA Inventory Update Reporting Internet homepage at *http://www.epa.gov/iur* and follow the appropriate links.

(2) *By phone or e-mail.* Contact the EPA TSCA Hotline at (202) 554–1404 or *TSCA-Hotline@epa.gov* for a CD–ROM containing the instructions.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–3248–F]

RIN 0938–AR00

Medicare Program; Changes to the Electronic Prescribing (eRx) Incentive Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule modifies the electronic prescribing (eRx) quality measure used for certain reporting periods in calendar year (CY) 2011; provides additional significant hardship exemption categories for eligible professionals and group practices to request an exemption during 2011 for the 2012 eRx payment adjustment due to a significant hardship; and extends the deadline for submitting requests for consideration for the two significant hardship exemption categories for the 2012 eRx payment adjustment that were finalized in the CY 2011 Medicare Physician Fee Schedule final rule with comment period.

DATES: *Effective Date:* These regulations are effective on October 6, 2011.

Deadline for Submission of Hardship Exemption Requests for the 2012 eRx Payment Adjustment: Hardship exemption requests for the 2012 eRx payment must be received by November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Christine Estella, (410) 786–0485.

SUPPLEMENTARY INFORMATION:

I. Background

Section 132 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), Public Law 110–275, authorized the Secretary to establish a program to encourage the adoption and use of eRx technology. Implemented in 2009, the program offers a combination of financial incentives and payment adjustments to eligible professionals, which are defined under section 1848(k)(3)(B) of the Social Security Act (the Act). We understand that the term ''eligible professional'' is used in multiple CMS programs. However, for the purpose of this final rule, the eligible professionals to whom we refer are only those professionals eligible to participate in the eRx Incentive Program unless we specify otherwise. For more information on which professionals are eligible to participate in the eRx Incentive Program, we refer readers to the Eligible Professionals page of the eRx Incentive Program section of the CMS Web site at: *http://www.cms.gov/ERxIncentive/05_Eligible%20Professionals.asp#TopOfPage.* Under section 1848(m)(2) of the Act, an eligible professional (or group practice participating in the eRx group practice reporting option (GPRO)) who is a successful electronic prescriber during 2011 can qualify for an incentive payment equal to 1.0 percent of the Secretary's estimate of Medicare Part B Physician Fee Schedule (PFS) allowed charges for covered professional services furnished by the eligible professional (or group practice) during the 2011 reporting period.

In accordance with section 1848(a)(5)(A) of the Act, a PFS payment adjustment will begin in 2012 for those eligible professionals and group practices who are not successful electronic prescribers and will increase each year through 2014. Specifically, under 42 CFR 414.92(c)(2), for covered professional services furnished by an eligible professional during 2012, 2013, and 2014, if an eligible professional (or in the case of a group practice, the group practice) is not a successful electronic prescriber (as specified by CMS for purposes of the payment adjustment) for an applicable reporting period (as specified by CMS), then the PFS amount for such services furnished by such professional (or group practice) during the year shall be equal to the applicable percent (99 percent for 2012, 98.5 percent for 2013, and 98 percent for 2014) of the PFS amount that would otherwise apply. For each year of the program thus far, we have established program requirements for the eRx Incentive Program in the annual Medicare PFS rulemaking, including the applicable reporting period(s) for the year and how an eligible professional can become a successful electronic prescriber for the year. For example, we finalized the program requirements for qualifying for 2009 and 2010 eRx incentive payments in the CY 2009 and 2010 PFS final rules with comment period (73 FR 69847 through 69852 and 74 FR 61849 through 61861), respectively. In the November 29, 2010 **Federal Register** (75 FR 73551 through 73556), we published the CY 2011 PFS final rule with comment period, which set forth the requirements for qualifying for a CY 2011 incentive payment, as well as the requirements for the 2012 and 2013 eRx payment adjustments.

Following the publication of the CY 2011 PFS final rule with comment period, we have received a number of inquiries from stakeholders regarding the eRx Incentive Program. Many stakeholders voiced concerns about differences between the requirements under the eRx Incentive Program and the Medicare Electronic Health Record (EHR) Incentive Program, which also requires, among other things, eligible professionals to satisfy an electronic prescribing objective and measure to be considered a meaningful user of Certified EHR Technology (''eligible professional'' is defined at 42 CFR 495.100 for purposes of the Medicare EHR Incentive Program). (For more information regarding the EHR Incentive Program see the final rule published in the **Federal Register** on July 28, 2010; 75 FR 44314 through 44588.) While Medicare eligible professionals and group practices cannot earn an incentive under both the eRx Incentive Program and the EHR Incentive Program for the same year, eligible professionals will be

subject to an eRx payment adjustment if they do not meet the requirements under the eRx Incentive Program, regardless of whether the eligible professional participates in and earns an incentive under the Medicare EHR Incentive Program.

Stakeholders claim that the requirements under both programs are administratively confusing, cumbersome, and unnecessarily duplicative. On February 17, 2011, the Government Accountability Office (GAO) also published a report which indicated that CMS should address the inconsistencies between the eRx Incentive Program and the EHR Incentive Program (GAO-11-159, ''Electronic Prescribing: CMS Should Address Inconsistencies in Its Two Incentive Programs That Encourage the Use of Health Information Technology,'' available at *http://www.gao.gov/products/GAO–11–159*).

As a result of the concerns noted previously and in accordance with Executive Order 13563 (entitled ''Improving Regulation and Regulatory Review'' and released January 18, 2011), which directs government agencies to identify and reduce redundant, inconsistent, or overlapping regulatory requirements and, among other things, identify and consider regulatory approaches that reduce burden and maintain flexibility of choice when possible, we subsequently proposed to make changes to the eRx Incentive Program in a proposed rule that appeared in the June 1, 2011 **Federal Register** (76 FR 31547) entitled ''Medicare Program; Proposed Changes to the Electronic Prescribing (ERx) Incentive Program'' (hereinafter referred to as the June 2011 proposed rule). As described further in sections II.A and II.B of this final rule, in that proposed rule we specifically proposed to modify the 2011 eRx quality measure (that is, the eRx quality measure used for certain reporting periods in CY 2011) and to create additional significant hardship exemption categories for the 2012 eRx payment adjustment.

II. Summary of the Proposed Rule and Analysis of and Responses to Public Comments

In this section of the final rule, we summarize our proposals, public comments, and our responses. We received over 404 public comments on the proposed rule. Approximately 39 comments were from groups representing eligible professionals, such as academic institutions, government agencies, and professional societies. The remaining comments were from individual physicians and private citizens.

We received numerous comments that were not related to our proposal to modify the 2011 eRx quality measure or the proposals for additional significant hardship exemption categories for the 2012 eRx payment adjustment. While we appreciate the commenters' feedback, these comments are outside the scope of the issues addressed in this final rule. This final rule addresses our proposals to modify the 2011 eRx quality measure and establish additional significant hardship exemption categories related to the 2012 eRx payment adjustment. We will take these comments into consideration for future eRx Incentive Program years.

A. Modification of the CY 2011 Electronic Prescribing Quality Measure

In the CY 2011 PFS final rule with comment period entitled ''Medicare Program; Payment Policies Under the Physicians Fee Schedule and Other Revisions to Part B for CY 2011'' (75 FR 73553 through 76566), we finalized an eRx quality measure that would be used during the reporting periods in 2011 to determine whether an eligible professional is a successful electronic prescriber under the eRx Incentive Program for the 2011 eRx incentive as well as for the 2012 and 2013 eRx payment adjustments. The measure that we adopted for reporting in 2011 (which is the same measure that was adopted for the 2010 eRx Incentive Program) is described as a measure that documents whether an eligible professional or group practice has adopted a ''qualified'' electronic prescribing system.

A qualified electronic prescribing system is a system that is capable of performing the following four specific functionalities:

- Generate a complete active medication list incorporating electronic data received from applicable pharmacies and pharmacy benefit managers (PBMs), if available.
- Allow eligible professionals to select medications, print prescriptions, electronically transmit prescriptions, and conduct alerts (that is, written or acoustic signals to warn the prescriber of possible undesirable or unsafe situations including potentially inappropriate doses or routes of administration of a drug, drug-drug interactions, allergy concerns, or warnings and cautions) and this functionality must be enabled.
- Provide information related to lower cost therapeutically appropriate alternatives (if any) (that is, the ability of an electronic prescribing system to receive tiered formulary information, if available, would again suffice for this requirement for 2011 and until this function is more widely available in the marketplace).
- Provide information on formulary or tiered formulary medications, patient eligibility, and authorization requirements received electronically from the patient's drug plan (if available).

In addition, to being a qualified electronic prescribing system under the eRx Incentive Program, electronic systems must convey the information above using the standards currently in effect for the Part D eRx program, including certain National Council for Prescription Drug Programs' (NCPDP) standards. (To view the current eRx quality measure specifications, we refer readers to the ''2011 eRx Measure Specifications, Release Notes, and Claims-Based Reporting Principles'' download found on the E–Prescribing Measure page of the eRx Incentive Program section of the CMS Web site at: *http://www.cms.gov/ERxIncentive/06_E-Prescribing_Measure.asp#TopOfPage*.)

The technological requirements for electronic prescribing in the EHR Incentive Program are similar to the technological requirements for the eRx Incentive Program. Under the EHR Incentive Program, eligible professionals are required to adopt Certified EHR Technology, which must include the capability to perform certain electronic prescribing functions that are similar to those required for the eRx Incentive Program. Certified EHR Technology must be tested and certified by a certification body authorized by the National Coordinator for Health Information Technology (at the present time, these bodies are the Office of the National Coordinator for Health Information Technology (ONC)-Authorized Testing and Certification Bodies (ONC–ATCBs)). This means that eligible professionals participating in the EHR Incentive Program can rely on a third party certification body to ensure that the vendor's EHR technology includes certain technical capabilities. EHR technology is certified as a ''Complete EHR'' or an ''EHR module,'' as those terms are defined at 45 CFR 170.102. A Complete EHR is EHR technology that has been developed to meet, at a minimum, all applicable certification criteria adopted by the Secretary. An EHR Module is any service, component, or combination thereof that can meet the requirements of at least one certification criterion adopted by the Secretary.

In contrast, the eRx Incentive Program does not require certification of the

system used for eRx. Thus, eligible professionals or group practices are generally required to rely on information that they obtain from the vendors of the systems and demonstration of the functionalities of the system, to determine if the system meets the required standard. We believe that the electronic prescribing capabilities of Certified EHR Technology are sufficiently similar in nature (and in fact, would more than likely be capable of performing all of the required functionalities) and would be appropriate for purposes of the eRx Incentive Program. Among other requirements, Certified EHR Technology must be able to electronically generate and transmit prescriptions and prescription-related information in accordance with certain standards, some of which have been adopted for purposes of electronic prescribing under Part D. Similar to the required functionalities of a qualified electronic prescribing system, Certified EHR Technology also must be able to check for drug-drug interactions and check whether drugs are in a formulary or a preferred drug list, although the certification criteria do not specify any standards for the performance of those functions. We believe that it is acceptable that not all of the Part D eRx standards are required for Certified EHR Technology in light of our desire to better align the requirements of the eRx and the Medicare EHR Incentive Program and potentially reduce unnecessary investment in multiple technologies for purposes of meeting the requirements for each program. Furthermore, to the extent that an eligible professional uses Certified EHR Technology to electronically prescribe under Part D, he or she would still be required to comply with the Part D standards to do so.

In addition, we believe it is important to provide more certainty to eligible professionals (including those in group practices) that may be participating in both the EHR Incentive Program and the eRx Incentive Program with regard to purchasing systems for use under these programs, and to encourage adoption of Certified EHR Technology. Accordingly, in the proposed rule (76 FR 31549), we proposed changes to the eRx quality measure reported in 2011 for purposes of reporting for the 2011 eRx incentive and the 2013 eRx payment adjustment (the ''2011 eRx quality measure'') in accordance with section 1848(k)(2)(C) of the Act. This section of the Act requires the eRx measure to be endorsed by the entity with a contract with the Secretary under section 1890(a) of the Act (currently, that entity is the National Quality Forum (NQF)) except for in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the NQF. This 2011 eRx measure, as it is written prior to the changes to the eRx measure we are finalizing in this final rule, is currently NQF-endorsed.

In the June 2011 proposed rule (76 FR 31549), we proposed to revise the description statement for the 2011 eRx measure that we adopted for reporting in 2011 for purposes of the 2011 eRx incentive and the 2013 eRx payment adjustment. Currently, the description statement indicates that the measure documents whether an eligible professional or group practice has adopted a ''qualified'' electronic prescribing system that performs the four functionalities previously discussed. We proposed to revise this description statement to indicate that the measure documents whether an eligible professional or group practice has adopted a ''qualified'' electronic prescribing system that performs the four functionalities previously discussed *or* is Certified EHR Technology as defined at 42 CFR 495.4 and 45 CFR 170.102.

In accordance with section 1848(m)(3)(B)(v) of the Act, which requires the Secretary, to the extent practicable, to ensure that eligible professionals utilize electronic prescribing systems in compliance with standards established for such systems pursuant to the Part D eRx Program under section 1860D–4(e) of the Act, in the June 2011 proposed rule (76 FR 31549), we also proposed that, for purposes of the 2011 eRx measure, Certified EHR Technology is required to comply with at least one of the Part D standards for the electronic transmission of prescriptions at 42 CFR 423.160(b)(2)(ii) (that is, NCPDP SCRIPT Version 8.1 and NCPDP SCRIPT Version 10.6). This requirement is consistent with the ONC certification requirements at 45 CFR 170.304(b) and 170.205(b)(1) and (2). We received no comments regarding our proposal to require that Certified EHR Technology comply with the Part D standards for the electronic transmission of prescriptions at 42 CFR 423.160(b)(2)(ii). Therefore, for the reasons we stated previously, we are finalizing this requirement.

Below we discuss comments regarding our proposal to change the description statement and what constitutes a ''qualified'' electronic prescribing system under the 2011 eRx quality measure.

Comment: Several commenters supported our proposal to modify the 2011 eRx measure to allow for use of Certified EHR Technology, and did not offer any other suggestions to modify the 2011 eRx measure.

Response: We appreciate the commenter's supportive comments and are finalizing this proposal.

Comment: One commenter asked us to reinstate G-codes G8445 and G8446, which were G-codes used in the eRx Incentive Program under previous program years that indicate actions other than the generation of an electronic prescription.

Response: Our intention for 2011 is to focus on the reporting of actual electronic prescribing events. G-code G8445 indicates that, although an eligible professional has an electronic prescribing system, no prescriptions were generated during the denominator-eligible encounter. G-code G8446 indicates that, although an eligible professional has access to an electronic prescribing system, a prescription was not generated electronically during the encounter because, due to State or Federal law or regulation, such as a prescription could not be generated electronically. These two G-codes do not indicate the use of an electronic prescribing system to generate a prescription. Since it is our desire to concentrate solely on the reporting of actual prescribing events, we are not allowing for the use of G8445 or G8446 for reporting for the 2011 eRx incentive and the 2013 eRx payment adjustment.

Comment: Some commenters expressed concern over not being able to report the eRx measure in instances where, although an electronic prescription was generated, eligible professionals could not appropriately report the eRx measure because these encounters did not fall within the eRx measure's denominator. Therefore, to account for this limitation, these commenters asked us to include codes not currently included in the eRx measure's denominator, such as CPT 77427, which is a code tied to radiation therapy; CPT 99024, which is a code related to postoperative visits; and G0438, which is one of the two newly introduced annual wellness visit codes.

Response: We appreciate the commenters' suggestions to modify the eRx measure's denominator to include these CPT and G codes. However, it is not operationally feasible to modify the analytics for the eRx measure used for the 2011 eRx incentive and 2013 eRx payment adjustment in this manner. Whereas our proposal to modify the measure for allowing use of Certified EHR Technology expands the types of

electronic prescribing systems recognized as ''qualified'' for purposes of reporting, the addition of denominator codes to the eRx measure for the 2011 eRx incentive and 2013 eRx payment adjustment would change the analytics of the eRx measure. We believe, however, the commenters' concern about not being able to report the eRx measure due to electronically prescribing during encounters not included in the measure's denominator is addressed by one of the additional significant hardship exemption categories we are finalizing in section II.B of this final rule. Specifically, for the reasons we state in section II.B.3.d of this final rule, we are finalizing a significant hardship exemption category due to insufficient opportunities to report the electronic prescribing measure due to limitations of the measure's denominator.

Comment: Some commenters stated that, although they support our proposal to modify the eRx measure to allow for use of Certified EHR Technology, our proposal does not go far enough to align the eRx Incentive Program with the Medicare EHR Incentive Program, as the Certified EHR Technology must still meet the four functionalities of a ''qualified'' electronic prescribing system.

Response: We appreciate the commenters' feedback. We are working to address differences, where appropriate, between the eRx Incentive Program and Medicare EHR Incentive Program. However, we did not propose to require that Certified EHR Technology to still meet the four functionalities identified in the measure to be a ''qualified'' electronic system. As we stated in the proposed rule (76 FR 31550), ''Certified EHR Technology would be recognized as a qualified system under the revised eRx quality measure regardless of whether the Certified EHR Technology has all four of the functionalities previously described.'' In addition, as we noted, we believe that Certified EHR Technology will be capable of performing all of the required functionalities for purposes of reporting the 2011 eRx quality measure.

After considering the comments received and for the reasons we articulated previously, we are finalizing our proposal to modify the description of the 2011 eRx measure to indicate that the measure documents whether an eligible professional or group practice has adopted a ''qualified'' electronic prescribing system that performs the four functionalities previously described or is Certified EHR Technology as defined at 42 CFR 495.4 and 45 CFR 170.102. We believe that this change merely expands on the definition of a ''qualified'' electronic prescribing system without altering the original intent of the measure, which was to evaluate the extent to which eligible professionals generate and transmit prescriptions and prescription-related information electronically.

However, as stated previously, in accordance with section 1848(m)(3)(B)(v) of the Act, which requires the Secretary, to the extent practicable, to ensure that eligible professionals utilize electronic prescribing systems in compliance with standards established for such systems pursuant to the Part D eRx Program under section 1860D–4(e) of the Act, Certified EHR Technology must comply with the Part D standards for the electronic transmission of prescriptions at 42 CFR 423.160(b)(2)(ii).

As stated previously, section 1848(k)(2)(C) of the Act requires the eRx measure to be endorsed by the entity with a contract with the Secretary under section 1890(a) of the Act (currently, that entity is the National Quality Forum (NQF)) except for in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the NQF. While the eRx measure is currently an NQF-endorsed measure, this modification to change the 2011 eRx measure description has not yet been reviewed by the NQF. In light of this, we are not aware of any other NQF-endorsed measure related to electronic prescribing by eligible professionals that would be appropriate for use in the eRx Incentive Program. Therefore, we believe that the use of this eRx measure falls within the exception under section 1848(k)(2)(C)(ii) of the Act.

With this change to the 2011 eRx measure description that we are finalizing in this final rule, eligible professionals (including those in group practices) that are participating in the eRx Incentive Program have the option of adopting either a qualified electronic prescribing system that performs the four functionalities previously discussed *or* Certified EHR Technology as defined at 42 CFR 495.4 and 45 CFR 170.102 regardless of whether the Certified EHR Technology has all four of the functionalities previously described.

Because the change to the 2011 eRx measure we are finalizing will not be effective until the effective date of this final rule, this change will only be effective for the remainder of the reporting periods in CY 2011 for the 2011 eRx incentive and the 2013 eRx payment adjustment. The change to the 2011 eRx quality measure does not apply retrospectively to any part of the CY 2011 reporting periods for the 2011 eRx incentive or the 2013 eRx payment adjustments that occurred prior to the effective date of this final rule. The change to the eRx measure does not change any of the regulations for the eRx Incentive Program payment adjustment, which are codified at 42 CFR 414.92(c)(2). In addition, because this proposed change was not finalized prior to the end of the 2012 eRx payment adjustment reporting period ended on June 30, 2011, the change to the eRx quality measures that we are finalizing in this final rule does not apply for purposes of reporting the eRx measure for the 2012 eRx payment adjustment. We note that this change to the eRx measure is consistent with our proposal under the CY 2012 PFS proposed rule entitled ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2012'' (76 FR 42890) to change the eRx measure for the 2012 through 2014 program years, which are the remaining years of the eRx Incentive Program.

B. Significant Hardship Exemption Categories for the 2012 eRx Payment Adjustment

1. Overview of the 2012 eRx Payment Adjustment

As required by section 1848(a)(5) of the Act, and in accordance with our regulations at § 414.92(c)(2), eligible professionals or group practices who are not successful electronic prescribers (as specified by CMS for purposes of the payment adjustment) are subject to the eRx payment adjustment in 2012. In the CY 2011 PFS final rule with comment period (75 FR 73560 through 73565), we finalized the program requirements for the 2012 eRx payment adjustment. Specifically, the 2012 eRx payment adjustment does not apply to the following: (1) An eligible professional who is not a physician (includes doctors of medicine, doctors of osteopathy, and podiatrists), nurse practitioner, or physician assistant as of June 30, 2011; (2) an eligible professional who does not have at least 100 cases (that is, claims for patient services) containing an encounter code that falls within the denominator of the eRx measure for dates of service between January 1, 2011 and June 30, 2011; or (3) an eligible professional who is a successful electronic prescriber for the January 1, 2011 through June 30, 2011 reporting period (that is, reports the eRx measure 10 times via claims between January 1, 2011 and June 30, 2011).

We also finalized the requirement that the 2012 eRx payment adjustment does not apply to an individual eligible professional or group practice if less than 10 percent of an eligible professional's or group practice's estimated total allowed charges for the January 1, 2011 through June 30, 2011 reporting period are comprised of services that appear in the denominator of the 2011 eRx measure. Information and other details about the eRx Incentive Program, including the requirements for group practices participating in the eRx GPRO in 2011 with regard to the 2012 eRx payment adjustment can be found on the eRx Incentive Program section of the CMS Web site at: *http://www.cms.gov/erxincentive*.

2. Established Significant Hardship Exemption Categories for the 2012 eRx Payment Adjustment

In addition to the requirements for the 2012 eRx payment adjustment, 42 CFR 414.92(c)(2)(ii) provides that we may, on a case-by-case basis, exempt an eligible professional (or group practice) from the application of the payment adjustment, if we determine, subject to annual renewal, that compliance with the requirement for being a successful electronic prescriber would result in a significant hardship. In the CY 2011 PFS final rule with comment period (75 FR 73564 through 75 FR 73565), we finalized two circumstances under which an eligible professional or group practice can request consideration for a significant hardship exemption for the 2012 eRx payment adjustment—

- The eligible professional or group practice practices in a rural area with limited high speed Internet access; or
- The eligible professional or group practice practices in an area with limited available pharmacies for electronic prescribing.

In order for eligible professionals and group practices to identify these categories for purposes of requesting a significant hardship exemption, we created a G-code for each of the above situations. Thus, to request consideration for a significant hardship exemption for the 2012 eRx payment adjustment, individual eligible professionals reported the appropriate G-code at least once on claims for services rendered between January 1, 2011 and June 30, 2011. Group practices that wished to participate in the 2011 eRx GPRO and be considered for exemption under one of the significant hardship categories were required to request a hardship exemption at the time they self-nominated to participate in the 2011 eRx GPRO earlier this year.

3. Additional Significant Hardship Exemption Categories for the 2012 eRx Payment Adjustment

Following the publication of the CY 2011 PFS final rule with comment period, we received numerous requests to expand the categories under the significant hardship exemption for the 2012 eRx payment adjustment. Some stakeholders recommended specific circumstances of significant hardship for our consideration (for example, eligible professionals who have prescribing privileges but do not prescribe under their NPI, eligible professionals who prescribe a high volume of narcotics, and eligible professionals who electronically prescribe but typically do not do so for any of the services included in the eRx measure's denominator), while others strongly suggested we consider increasing the number of specific hardship exemption categories. We believe that many of the circumstances raised by stakeholders posed a significant hardship and limited eligible professionals and group practices in their ability to meet the requirements for being successful electronic prescribers either because of the nature of their practice or because of the limitations of the eRx measure itself, and as a result, such professionals might be unfairly penalized. Therefore, in the proposed rule (76 FR 31551), we proposed to revise the significant hardship regulation at 42 CFR 414.92(c)(2)(ii) to add paragraphs that—(1) codify the two hardship exemption categories for the 2012 eRx payment adjustment that we finalized in the CY 2011 PFS final rule; and (2) codify the additional significant hardship categories for the 2012 eRx payment adjustment. We also proposed to allow some additional time for submitting significant hardship exemption requests to CMS.

Specifically, we proposed the following additional significant hardship exemption categories for the 2012 eRx payment adjustment with regard to the reporting period of January 1, 2011 through June 30, 2011:

- Eligible professionals who register to participate in the Medicare or Medicaid EHR Incentive Programs and adopt Certified EHR Technology.
- Inability to electronically prescribe due to local, State, or Federal law or regulation.
- Limited prescribing activity.
- Insufficient opportunities to report the eRx measure due to limitations of the measure's denominator.

Comment: One commenter suggested that we make changes to the regulation text at § 414.92 to reflect our finalized changes.

Response: We agree and have revised the significant hardship regulation at 42 CFR 414.92(c)(2)(ii) to reflect the changes we are finalizing in this final rule.

Comment: One commenter was worried that if these additional significant hardship exemption categories to the 2012 eRx payment adjustment were finalized, he would not be able to earn a 2011 eRx incentive.

Response: Incentives earned under the eRx Incentive Program are governed by section 1848(m)(2)(C) of the Act, whereas payment adjustments earned under the eRx Incentive Program are governed by section 1848(a)(5)(A) of the Act. The Secretary's authority to establish significant hardship exemption categories for those circumstances where compliance with the requirement for being a successful electronic prescriber would result in a significant hardship only apply to the provisions related to eRx payment adjustments. Separate criteria for being a successful electronic prescriber were established for the 2011 eRx incentive in the CY 2011 PFS final rule with comment period (75 FR 73553).

a. Eligible Professionals Who Register To Participate in the Medicare or Medicaid EHR Incentive Programs and Adopt Certified EHR Technology

In the June 2011 proposed rule (76 FR 31551), we proposed this exemption category at 42 CFR 414.92(c)(2)(ii)(C) because eligible professionals (including those in group practices) that intended to participate in the EHR Incentive Program may have delayed adopting electronic prescribing technology for purposes of the eRx Incentive Program until the list of Certified EHR Technologies became available so that the same technology could be used to satisfy both programs' requirements. The ONC final rule establishing a temporary certification program for health information technology (75 FR 36158) was not published in the **Federal Register** until June 24, 2010. The certification and listing of certified EHR technologies (certified Complete EHRs and certified EHR Modules) on the ONC Certified HIT Products List (CHPL) did not begin until September 2010. Until then, eligible professionals and group practices had no way of knowing which EHR technologies would be considered Certified EHR Technology. At the same time, we did not propose to use the first half of 2011 as the reporting period for the 2012 eRx payment adjustment until the CY 2011 PFS proposed rule went on public display at the Office of the

Federal Register on June 25, 2010. As such, we believe it may be a significant hardship for eligible professionals in this situation to have both adopted Certified EHR Technology and fully integrated the technology into their practice's clinical workflows and processes so that they would be able to report the eRx measure prior to June 30, 2011, especially given that an eligible professional under the Medicare EHR Incentive Program has until October 1, 2011, to begin a 90-day EHR reporting period for the 2011 payment year. Similarly, this extended time period provides Medicare eligible professionals under the eRx Incentive Program who are eligible for incentives under the Medicaid EHR Incentive Program with the majority of CY 2011 to adopt, implement, or upgrade to Certified EHR Technology. We believe this hardship exemption category is necessary and appropriate in order to fully support and encourage eligible professionals to actively take steps to become meaningful users of Certified EHR Technology. Also, in the absence of this significant hardship exemption category, eligible professionals may potentially have to adopt two systems (for example, a standalone electronic prescribing system for purposes of participation in the eRx Incentive Program, and Certified EHR Technology for purposes of participating in the Medicare and Medicaid EHR Incentive Programs), which could potentially be financially burdensome.

Comment: Several commenters supported our proposal to add a significant hardship exemption category for the 2012 eRx payment adjustment for eligible professionals who register to participate in the Medicare or Medicaid EHR Incentive Programs and adopt Certified EHR Technology without offering any other suggestions regarding this proposed significant hardship exemption category. Several commenters also stated that they would request an exemption under this significant hardship exemption category, should the category be finalized.

Response: We appreciate the commenters' supportive comments and are finalizing this significant hardship exemption category for the 2012 eRx payment adjustment.

Comment: Although commenters supported this significant hardship exemption category, several commenters recommended that we extend this significant hardship exemption category to eligible professionals other than those who have registered for the Medicare or Medicaid EHR Incentive Programs and adopted Certified EHR Technology, such as those eligible professionals who: (1) Intend to adopt EHR technology in either CY 2011 or 2012; (2) attest in CY 2012; or (3) achieve meaningful use in CY 2012.

Response: We appreciate the commenters' feedback. However, we proposed this significant hardship exemption category for the 2012 eRx payment adjustment for those eligible professionals who have taken proactive steps, such as having an electronic prescribing system available for immediate use, towards participating in the Medicare or Medicaid EHR Incentive Programs, under which there is a component on reporting electronic prescribing activities. With respect to eligible professionals who intend to adopt EHR technology in CY 2011 or have not yet taken the steps required in order to apply for this significant hardship exemption, we believe that mere intent to adopt Certified EHR Technology or attest at a later date does not sufficiently demonstrate that an eligible professional will adopt Certified EHR Technology to participate in the Medicare or Medicaid EHR Incentive Programs. Unlike those eligible professionals who have already registered for the Medicare or Medicaid EHR Incentive Programs and have Certified EHR Technology available for immediate use, we would have to monitor and provide oversight over those eligible professionals who have not yet taken these steps to participate in the Medicare or Medicaid EHR Incentive Programs. To prevent these monitoring and oversight issues, we believe that all requirements to qualify for an exemption under this significant hardship exemption category must be met by October 1, 2011 and prior to the time the eligible professional requests an exemption.

Comment: While commenters supported our proposal to allow eligible professionals participating in the Medicaid EHR Incentive Program to request a significant hardship exemption from the 2012 eRx payment adjustment, some commenters stated that we should use the ''adopt, implement, and upgrade'' mechanism for receiving an incentive payment under the Medicaid EHR Incentive Program to determine whether an eligible professional should be exempt from the 2012 eRx payment adjustment.

Response: We recognize that eligible professionals who participate in the Medicaid EHR Incentive Program may qualify for an incentive payment if they adopt, implement, upgrade, or demonstrate meaningful use of Certified EHR Technology in their first year of participation. Eligible professionals who attempt to qualify for an incentive payment under the Medicaid EHR Incentive Program by adopting, implementing, or upgrading Certified EHR Technology may request an exemption under this significant hardship exemption category provided that the eligible professional meets the requirements for this significant hardship exemption finalized in this final rule.

Comment: One commenter asked that we clarify the term ''adopted'' as it applies to this significant hardship exemption category.

Response: This significant hardship exemption category is intended for those eligible professionals who have registered to participate in the Medicare or Medicaid EHR Incentive Programs and adopted Certified EHR Technology. That is, in order to potentially qualify for an exemption under this significant hardship exemption category, an eligible professional or group practice must have Certified EHR Technology available for immediate use for purposes of participating in the Medicare or Medicaid EHR Incentive Programs.

Comment: Some commenters asked whether eligible professionals practicing in states that have not yet fully implemented their Medicaid EHR Incentive Program, and therefore do not have the ability to register for participation in the Medicaid EHR Incentive Program, could apply for an exemption under this significant hardship exemption category.

Response: We appreciate the commenters' feedback. We realize that not all states have fully implemented their Medicaid EHR Incentive Programs. Rather, the implementation of these Medicaid EHR Incentive Programs is pending. This, however, does not affect an eligible professional's ability to register to participate in his/her state's Medicaid EHR Incentive Program. Therefore, eligible professionals practicing in states where their respective Medicaid EHR Incentive Program have not yet been implemented are not precluded from requesting or qualifying for an exemption under this significant hardship exemption category. We note that eligible professionals must still meet the finalized requirements we are finalizing as described below, with regard this significant hardship exemption category.

Comment: One commenter stated that eligible professionals participating under Medicare Advantage (MA) also be allowed to submit a significant hardship request under this exemption category.

Response: We appreciate the commenters' feedback. To the extent

that professionals that participate under MA are eligible to participate in the eRx Incentive Program for purposes of the 2012 eRx payment adjustment, these eligible professionals may qualify for an exemption under this significant hardship exemption category.

Comment: One commenter asked that practices working with Regional Extension Centers to achieve meaningful use under the Medicare or Medicaid EHR Incentive Programs be able to apply for this exemption.

Response: We appreciate the commenter's feedback. As long as the eligible professionals within the practice meet the requirements described for this significant hardship exemption category for the 2012 eRx payment adjustment, the eligible professionals within the practice may apply for this significant hardship exemption category.

Comment: Several commenters opposed our proposed requirement to provide a serial number of the product the eligible professional has adopted in order to be eligible to request a significant hardship exemption under this category. Some of these commenters stated that a serial number, in some instances, not available for his or her Certified EHR Technology.

Response: We solicited comments on whether eligible professionals should provide a serial number for their specific product. Based on the comments received and our belief that providing the ''CMS EHR Certification ID'' for the Certified EHR Technology which can be generated through the Certified HIT Products List (CHPL) Web site maintained by the Office of the National Coordinator for Health Information Technology (ONC) is sufficient evidence that an eligible professional possesses Certified EHR Technology available for immediate use, we will not require that eligible professionals provide his or her product's serial number when requesting an exemption under this significant hardship exemption category.

Comment: Several commenters suggested that an eligible professional be provided with flexibility in providing proof that an eligible professional has adopted Certified EHR Technology for purposes of participating in the Medicare or Medicaid EHR Incentive Programs. Some commenters suggested that eligible professionals have the option of either providing a certification or serial number. One commenter stated it was unnecessary for eligible professionals to provide such proof because CMS already has access to information on those eligible professionals participating in the EHR Incentive Program.

Response: To qualify for an exemption under this significant hardship exemption category, an eligible professional must have Certified EHR Technology available for immediate use. In order to efficiently review and process requests for exemptions under this significant hardship exemption category, it is necessary to apply uniform requirements for qualifying for an exemption under this significant hardship exemption category. Therefore, rather than allow eligible professionals to submit either a certification number or serial number as proof that these eligible professionals have adopted Certified EHR Technology, we are requiring that every eligible professional submit the certification number associated with his or her Certified EHR Technology in order to qualify for consideration for an exemption under this significant hardship exemption category. We are requiring an eligible professional provide us with the CMS EHR Certification ID, not a serial number, because, as commenters stated, a serial number is, in some instances, not available for his or her Certified EHR Technology. With respect to the comment stating CMS already has this information, we note that providing a certification number for his or her Certified EHR Technology is not required at the time an eligible professional registers for participation under the Medicare or Medicaid EHR Incentive Programs. Rather, an eligible professional is not required to provide a certification number for his or her Certified EHR Technology by the time of attestation.

Comment: Some commenters stated that we should not perform a case-by-case review of exemption under this significant hardship exemption category. Rather, eligible professionals participating in the Medicare or Medicaid EHR Incentive Programs should be automatically exempt from the 2012 eRx payment adjustment.

Response: We appreciate the commenters' feedback. However, we are required by section 1848(a)(5)(b) of the Act to review requests for significant hardship exemption on a case-by-case basis.

After considering the comments received and for the reasons previously discussed, we are finalizing this significant hardship exemption category for the 2012 eRx payment adjustment for eligible professionals or group practices who register to participate in the Medicare or Medicaid EHR Incentive Programs and adopt Certified EHR Technology. To be considered for a significant hardship exemption under this category, an eligible professional must: (1) Have registered for either the Medicare or Medicaid EHR Incentive Program (for instructions on how to register for one of the EHR Incentive Programs, we refer readers to the Registration and Attestation page of the EHR Incentive Programs section of the CMS Web site at *http://www.cms.gov/EHRIncentivePrograms/20_RegistrationandAttestation.asp#TopOfPage*); and (2) provide identifying information as to the Certified EHR Technology (as defined at 42 CFR 495.4 and 45 CFR 170.102) that has been adopted for use no later than October 1, 2011.

Please note that, in order to qualify for an exemption to the 2012 eRx payment adjustment under this significant hardship exemption category, it is not necessary that an eligible professional receive an incentive payment under the Medicare or Medicaid EHR Incentive Program.

A request for a significant hardship exemption category under this category will then be reviewed on a case-by-case basis. For purposes of this significant hardship exemption category, the identifying information consists of the ''CMS EHR Certification ID'' for the Certified EHR Technology which can be generated through the CHPL Web site maintained by ONC. In requesting a significant hardship exemption category under this category, an eligible professional is attesting that he or she either has purchased the specified Certified EHR Technology (as identified by the CMS ID) or has the specified Certified EHR Technology (as identified by the CMS ID) available for immediate use and that the eligible professional intends to use that Certified EHR Technology to qualify for a Medicare or Medicaid EHR incentive for payment year 2011 ''CMS EHR Certification ID'' for the Certified EHR Technology which can be generated through the CHPL Web site maintained by ONC.

b. Inability To Electronically Prescribe Due to Local, State, or Federal Law or Regulation

In the June 2011 proposed rule (76 FR 31551), we proposed at 42 CFR 414.92(c)(2)(ii)(D) that, to the extent that local, State, or Federal law or regulation limits or prevents an eligible professional or group practice that otherwise has general prescribing authority from electronically prescribing, the eligible professional or group practice would be able to request consideration for an exemption from application of the 2012 eRx payment adjustment, which would be reviewed

on a case-by-case basis. We believe eligible professionals in this situation face a significant hardship with regard to the requirements for being successful electronic prescribers because while they may meet the 10-percent threshold for applicability of the payment adjustment, they may not have sufficient opportunities to meet the requirements for being a successful electronic prescriber because Federal, State, or local law or regulation may limit the number of opportunities that an eligible professional or group practice has to electronically prescribe (that is, having at least 100 denominator-eligible visits prior to June 30, 2011, but being unable to electronically prescribe for at least 10 of these denominator-eligible visits due to Federal, State, or local law or regulation).

Comment: Several commenters supported our proposal to add a significant hardship exemption category for the 2012 eRx payment adjustment for eligible professionals who are unable to electronically prescribe due to local, State, or Federal law or regulation without offering any other suggestions regarding this significant hardship exemption category. Several commenters also indicated that they would request an exemption under this significant hardship exemption category, should the category be finalized.

Response: We appreciate the commenters' supportive comments and are finalizing this category.

Comment: Some commenters suggested that we encourage eligible professionals who cannot electronically prescribe narcotics because their electronic prescribing system is not yet compliant with Federal or State law to apply for an exemption under this significant hardship exemption category.

Response: This significant hardship exemption category is indeed intended for these eligible professionals who mainly prescribe narcotics but, due to limitations in local, State, or Federal law or regulation, cannot submit these prescriptions electronically.

After considering the comments received and for the reasons discussed, we are finalizing the significant hardship exemption category for the 2012 eRx payment adjustment for eligible professionals or group practices whose prescribing authority is limited to the extent that local, State, or Federal law or regulation limits or prevents an eligible professional or group practice that otherwise has general prescribing authority from electronically prescribing (for example, eligible professionals who prescribe a large volume of narcotics, which may not be electronically prescribed in some States, or eligible professionals who practice in a State that prohibits or limits the transmission of electronic prescriptions via a third party network such as Surescripts). Please note that this significant hardship exemption category is not limited to those eligible professionals that practice in states that do not allow narcotic prescriptions to be transmitted electronically. Eligible professionals or group practices may request consideration for an exemption under this significant hardship category from application of the 2012 eRx payment adjustment, which will be reviewed on a case-by-case basis.

c. Limited Prescribing Activity

In the June 2011 proposed rule (76 FR 31552), we proposed at 42 CFR 414.92(c)(2)(ii)(E) that an eligible professional who has prescribing privileges but does not prescribe or very infrequently prescribes in his or her practice, yet still meets the 10-percent threshold for applicability of the payment adjustment, would be able to request consideration for a significant hardship exemption from application of the 2012 eRx payment adjustment, which would be reviewed on a case-by-case basis. We believe that it is a significant hardship for eligible professionals who have prescribing privileges, but infrequently prescribe, to become successful electronic prescribers because the nature of their practice may limit the number of opportunities of an eligible professional or group practice to prescribe, much less electronically prescribe.

Comment: Several commenters supported our proposal to add a significant hardship exemption category for the 2012 eRx payment adjustment for eligible professionals who have limited prescribing activity without offering any other suggestions regarding this significant hardship exemption category. Several commenters also stated that they would request an exemption under this significant hardship exemption category, should the category be finalized.

Response: We appreciate the commenters' supportive comments. We are finalizing the significant hardship exemption category for eligible professionals who have limited prescribing activity.

Comment: One commenter suggested that we establish a G-code for this significant hardship exemption category, similar to the G-codes we've established for the two significant hardship exemption categories finalized in 2011 PFS final rule described in section II.B.2 of this final rule.

Response: We appreciate the commenters' feedback. Unfortunately, it is not technically feasible for us to create a G-code for this significant hardship prior to the deadline we are finalizing in section II.B.5 of this final rule for submitting significant hardship exemption requests for the 2012 eRx payment adjustment.

After considering the comments received and for the reasons previously discussed, we are finalizing this significant hardship exemption category for the 2012 eRx payment adjustment for eligible professionals or group practices who have prescribing privileges but do not prescribe or very infrequently prescribe in practice (for example, a nurse practitioner who may not write prescriptions under his or her own NPI, a physician who decides to let his Drug Enforcement Administration registration expire during the reporting period without renewing it, or an eligible professional who prescribed fewer than 10 prescriptions between January 1, 2011 and June 30, 2011 regardless of whether the prescriptions were electronically prescribed or not), yet still meet the 10-percent threshold for applicability of the payment adjustment. Exemption requests under this significant hardship exemption category will be reviewed on a case-by-case basis.

d. Insufficient Opportunities To Report the eRx Measure Due to Limitations of the Measure's Denominator

To the extent an eligible professional or group practice has an electronic prescribing system, electronically prescribes, and has denominator-eligible visits, but does not normally write prescriptions associated with any of the types of visits included in the eRx measure's denominator (for example, certain types of physicians such as surgeons), in the proposed rule (76 FR 31552), we proposed at 42 CFR 414.92(c)(2)(ii)(F) that the eligible professional or group practice would be able to request consideration for a significant hardship exemption from application of the 2012 eRx payment adjustment, which would be reviewed on a case-by-case basis. Similar to the hardship category for lack of prescribing activity, we believe it would be a significant hardship for eligible professionals who do not have a sufficient opportunity to report the eRx measure because of the limitations of the eRx measure's denominator to meet the criteria for being a successful electronic prescriber. While such eligible professionals may meet the 10-

percent threshold for applicability of the payment adjustment and have at least 100 denominator-eligible visits prior to June 30, 2011, they may not be able to report their eRx activity at least 10 times because the bulk of their prescribing activity occurs in other circumstances that are not accounted for by the measure's denominator.

Comment: Several commenters supported our proposal to add a significant hardship exemption category for the 2012 eRx payment adjustment for eligible professionals who have insufficient opportunities to report the electronic prescribing measure due to limitations of the measure's denominator without offering any other suggestions regarding this proposed significant hardship exemption category. Several commenters also stated that they would request an exemption under this significant hardship exemption category, should the category be finalized.

Response: We appreciate the commenters' supportive comments and are finalizing this category.

Comment: One commenter stated that eligible professionals who provide electronic prescriptions on a day different than the beneficiary's visit, such as the situation where an eligible professional provides a prescription during a postoperative visit, should be able to apply for a significant hardship exemption category.

Response: We agree. This significant hardship exemption category is intended for instances such as these, where an eligible professional electronically prescribes but, because the measure's denominator only accounts for certain patient encounters, cannot report the electronic prescribing instance.

After considering the comments received, we are finalizing the significant hardship exemption category for the 2012 eRx payment adjustment for eligible professionals or group practices that have an electronic prescribing system, electronically prescribes, and has denominator-eligible visits, but do not normally write prescriptions associated with any of the types of visits included in the eRx measure's denominator (for example, certain types of physicians such as surgeons). Requests for an exemption under this significant hardship exemption category will be reviewed on a case-by-case basis.

e. Significant Hardship Exemption Categories Not Proposed in the Proposed Rule

Comment: While our proposal for additional significant hardship exemption categories was appreciated, several commenters suggested we, in general, add more hardship exemption categories for the 2012 eRx payment adjustment, or offered specific additional hardship circumstances for our consideration.

Response: We appreciate the commenters' feedback. However, as discussed below, we are not finalizing any of the additional significant hardship exemption categories commenters suggested because such suggested significant hardship exemption categories were not proposed in the proposed rule, do not constitute a significant hardship under section 1848(a)(5) of the Act, or involve circumstances that may be covered by the limitations to the 2012 eRx payment adjustment established in the CY 2011 PFS final rule (75 FR 73562), the significant hardship exemption categories previously established in the CY 2011 PFS final rule, or the significant hardship exemption categories we are finalizing in this final rule.

Comment: Several commenters stated that surgeons, neuro-ophthalmologists, orthopedic doctors, and radio-oncologists could not meet the criteria for being a successful electronic prescriber for the 2012 eRx payment adjustment because these specialties mainly prescribe narcotics. Several commenters also stated that optometrists, eligible professionals who prescribe narcotics, eligible professionals who prescribe durable equipment, and other physicians whose specialties do not necessitate providing prescriptions on a regular basis should be exempt from the 2012 eRx payment adjustment.

Response: We appreciate the commenters' feedback. However, we believe that these suggested additional categories may already be addressed under the significant hardship exemption categories we are finalizing in this final rule.

For those eligible professionals who mainly prescribe narcotics, durable equipment, or only provide prescriptions on a limited basis, we believe that that these circumstances may be addressed by the additional significant hardship exemption categories we are finalizing, such as the significant hardship exemption categories discussed in sections II.B.3.b, II.B.3.c, and II.B.3.d of this final rule. For example, the significant hardship exemption category for eligible professionals or group practices whose prescribing authority is limited to the extent that local, State, or Federal law or regulation described in section II.B.3.b. of this final rule is intended to provide for possible exemptions for those eligible professionals or group practices who cannot meet the criteria for being a successful prescriber for the 2012 eRx payment adjustment because they mainly prescribe narcotics. This significant hardship exemption category may apply, for example, to eligible professionals such as surgeons who mainly prescribe narcotics in a State that does not permit or limits the transmission of a narcotic prescription through electronic means.

The significant hardship exemption category for eligible professionals and group practices with limited prescribing activity described in section II.B.3.c of this final rule is intended to provide for possible exemption of eligible professionals who rarely prescribe yet still meet the 10-percent threshold for applicability of the payment adjustment and have at least 100 denominator eligible visits prior to June 30, 2011. This significant hardship exemption category may, for example, apply to those specialties where prescriptions are not given on a regular basis.

Furthermore, the significant hardship exemption category for eligible professionals or group practices who do not normally write prescriptions associated with any of the types of visits included in the eRx quality measure's denominator described in section II.B.3.d of this final rule is intended to exempt those eligible professionals such as surgeons or radio-oncologists who usually provide prescriptions outside denominator-eligible encounters.

Comment: Several commenters stated that chiropractors should be exempt from the 2012 eRx payment adjustment.

Response: With respect to chiropractors, as we mentioned previously in section II.B.1. of this final rule, we note that we finalized limitations to the 2012 eRx payment adjustment in the CY 2011 PFS final rule (75 FR 73562). Because chiropractors are not within the category of eligible professionals to which the 2012 eRx payment adjustment applies, chiropractors are not subject to the 2012 eRx payment adjustment.

Comment: Some commenters stated that eligible professionals who only see Medicare patients on an occasional basis, part-time providers, eligible professionals who dispense medications from their offices, eligible professionals who only perform home visits for patients, eligible professionals who practice on military bases, and eligible professionals who work in nursing homes or long-term care facilities should be exempt from the 2012 eRx

payment adjustment because these eligible professionals either only have limited opportunities to prescribe medications or cannot electronically prescribe on-site.

Response: With respect to these eligible professionals with a limited practice, such as part-time providers, we believe that, given the limitations finalized in the CY 2011 PFS final rule (75 FR 73562) that are described in section II.B.1 of this final rule, these groups potentially may not be subject to the 2012 eRx payment adjustment. Specifically, an eligible professional will not be subject to the 2012 eRx payment adjustment if the eligible professional does not have at least 100 cases (that is, claims for patient services) containing an encounter code that falls within the denominator of the eRx measure for dates of service between January 1, 2011 and June 30, 2011. For those eligible professionals who practice off-site, such as eligible professionals who perform home visits, we note that, although an eligible professional may not have a readily available electronic prescribing system during instances such as a home visit, we believe that these eligible professionals still have the ability to dispense an electronic prescription. Therefore, we do not believe that these instances constitute significant hardships in the manner that these significant hardship exemption categories we are finalizing do.

Comment: Several commenters stated that physicians who are over 60, eligible for Social Security benefits, or nearing retirement may find it difficult to justify the cost of implementing electronic prescribing systems.

Response: With respect to eligible professionals who are over 60, eligible for social security benefits, or nearing retirement, these scenarios were raised by commenters during the comment period and addressed in the CY 2011 PFS rule. As we stated in the CY 2011 PFS final rule (75 FR 73564), we believe these instances do not constitute significant hardships in the manner that these significant hardship exemption categories we are finalizing do. We believe that encouraging the use of electronic prescribing outweighs the cost of purchasing an electronic prescribing system, because we believe use of these systems will readily provide patient prescription history leading to better management of patient prescriptions and greater patient safety and care.

Comment: Some commenters also suggested that a significant hardship category be created for eligible professionals who did not meet the criteria for being a successful electronic prescriber for the 2012 eRx payment adjustment due to circumstances beyond one's control, such as natural disasters (for example, major floods), being on maternity leave, or having patients who do not consent to the use of electronic prescribing.

Response: With respect to eligible professionals who did not meet the criteria for being a successful electronic prescriber for the 2012 eRx payment adjustment due to circumstances beyond one's control, such as being on maternity leave or having patients who do not consent to the use of electronic prescribing, we understand that unforeseen circumstances may arise that prevent an eligible professional from reporting the eRx measure. However, we beleive that these circumstances may be addressed by the limitations to the 2012 eRx payment adjustment we have finalized.

With respect to those eligible professionals who have experienced natural disasters during a substantial portion of the 2012 eRx payment adjustment reporting period (that is, January 1, 2011 through June 30, 2011), such as the case of major flooding in the Midwest, we believe that these eligible professionals may apply for an exemption under the significant hardship exemption categories we have previously finalized (that is, the significant hardship exemption categories we finalized in the CY 2011 PFS final rule). For example, as described in section II.B.2 of this final rule, in the CY 2011 PFS final rule, we established a significant hardship exemption for those eligible professionals who practice in an area with limited available pharmacies for electronic prescribing. If a natural disaster such as a major flood leaves electronic prescribing systems, both in physician offices and pharmacies, offline, then an eligible professional may potentially qualify for a significant hardship exemption under this significant hardship exemption category. In addition, if, for instance, an eligible professional's practice is severely stunted due to a devastating natural disaster, an eligible professional could request consideration for an exemption under the limited prescribing activity significant hardship exemption category.

Comment: Several commenters have also requested that a significant hardship exemption category to the 2012 eRx payment adjustment be established for those eligible professionals who attempted but did not meet the criteria for being a successful electronic prescriber for the 2012 eRx payment adjustment due to problems encountered using the electronic prescribing system or reporting the eRx quality measure via claims. For example, some commenters stated they reported G-code G8443 (which was the eRx measure's numerator under the 2009 eRx Incentive Program) instead of G-code G8553, which is the 2011 eRx measure's numerator. Several commenters stated that, although they reported G-code G8553 on claims, the G-codes were stripped because the eligible professionals were submitting claims with a zero dollar amount. Some commenters have also encountered vendor issues with respect to reporting the eRx measure.

Response: We appreciate the commenters' feedback. In general, we understand that problems may occur that prevent the successful reporting of the eRx measure. However, we do not believe that these errors constitute a significant hardship under section 1848(a)(5)(B) of the Act. Rather, these are reporting errors that may have prevented an eligible professional from successfully reporting the eRx measure.

In addition, with respect to those eligible professionals who mistakenly reported G-code G8443, which was one of codes in the eRx measure's numerator in 2009, instead of G8553, which has been the only code in the eRx measure's numerator since 2010, we note that the public was given ample notice via rulemaking, which included an opportunity to comment on the eRx measure's proposed numerator G-code. Educational materials and other outreach opportunities such as national provider calls and special open door forums also provided instruction to report G8553 for all reporting periods occurring in 2011.

With respect to those instances where the G-codes were stripped because the eligible professionals were submitting claims with a zero dollar amount, we note that eligible professionals were provided with guidance as to how to successfully report the eRx measure. Specifically, we provided a guidance document titled ''Claims-Based Reporting Principles for Electronic Prescribing (eRx) Incentive Program,'' which provided instructions on how to properly report the eRx measure via claims. This document, which is available at *https://www.cms.gov/ERxIncentive/06_E-Prescribing_Measure.asp#TopOfPage,* states that, if a system does not allow a $0.00 line-item charge, a nominal amount can be substituted.''

With respect to experiencing vendor issues, we understand that these eligible professionals have made a good faith

effort to successfully report the eRx measure for the 2012 eRx payment adjustment. However, we do not believe that these errors constitute a significant hardship.

Comment: Some commenters also stated that small business practices should be exempt from the 2012 eRx payment adjustment, since the purchase of an electronic prescribing system puts a significant financial burden on these small practices.

Response: We understand that there are significant costs associated with purchasing an electronic prescribing system. However, we do not believe that this constitutes a significant hardship under section 1848(a)(5)(8) of the Act. We believe that encouraging the use of electronic prescribing outweighs the cost of purchasing an electronic prescribing system, because we believe use of these systems will readily provide patient prescription history, leading to better management of patient prescriptions and greater patient safety and care.

As stated earlier, after considering the comments received and for the reasons we discussed previously, we are finalizing the all of the following additional significant hardship exemption categories for the 2012 eRx payment adjustment:

- Eligible professionals who register to participate in the Medicare or Medicaid EHR Incentive Programs and Adopt Certified EHR Technology.
- Inability to electronically prescribe due to local, State, or Federal law or regulation.
- Limited prescribing activity.
- Insufficient opportunities to report the eRx measure due to limitations of the measure's denominator.

Therefore, we are finalizing our proposal to modify 42 CFR 414.92 to specify these significant hardship exemption categories to the 2012 eRx payment adjustment as well as making a minor edit to 42 CFR 414.92.

4. Process for Requesting Significant Hardship Exemption Categories for the 2012 eRx Payment Adjustment

In the June 2011 proposed rule (76 FR 31552), we proposed a process different from that finalized in the CY 2011 PFS final rule for requesting the significant hardships for the 2012 eRx payment adjustment described above. Specifically, to request a significant hardship exemption for any of the categories proposed and previously described for the 2012 eRx payment adjustment, we proposed that an eligible professional or group practice provide to us, via a Web-based tool or interface (or by mail, if it is not technically feasible for use to develop such a Web site) the following:

- Identifying information such as the TIN, NPI, name, mailing address, and e-mail address of all affected eligible professionals.
- The significant hardship exemption category(ies) above that apply.
- A justification statement describing how compliance with the requirement for being a successful electronic prescriber for the 2012 eRx payment adjustment during the reporting period would result in a significant hardship to the eligible professional or group practice. The justification statement should be specific to the category under which the eligible professional or group practice is submitting its request and must explain how the exemption applies to the professional or group practice. For example, if the eligible professional is requesting a significant hardship exemption due to Federal, State, or local law or regulation, he or she must cite the applicable law and how the law restricts the eligible professional's ability to electronically prescribe. Similarly, if the eligible professional is requesting a significant hardship due to lack of prescribing activity, the eligible professional must provide the number of prescriptions generated during the 2012 eRx payment adjustment reporting period.
- An attestation of the accuracy of the information provided.

In addition, we proposed that an eligible professional or group practice must, upon request, provide additional supporting documentation if there is insufficient information (such as, but not limited to, a TIN or NPI that we cannot match to the Medicare claims, a certification number for the Certified EHR Technology that does not appear on the list of Certified EHR Technology, or an incomplete justification for the significant hardship exemption request) to justify the request or make the determination whether a significant hardship exists.

We did not propose, nor are we allowing, an eligible professional or group practice to submit significant hardship exemption requests via e-mail or fax because additional security precautions would need to be put into place. In some cases, a TIN may consist of an eligible professional's social security number, which is considered to be personally identifiable information.

Comment: While several commenters supported our proposal to use a Web-based tool to process requests for significant hardship exemptions, some commenters stated that we should allow an eligible professional or group practice's administration and staff to complete a significant hardship exemption request on his/her behalf.

Response: We appreciate the commenter's feedback. However, we believe it is necessary that the eligible professional complete the request for an exemption to the 2012 eRx payment adjustment for the finalized significant hardship exemption category(ies). The eligible professional must personally attest with respect to the accuracy of the statements provided in the request for an exemption. We believe that requiring an eligible professional, rather than his or her staff, to apply for an exemption will not result in a significant burden to the eligible professional as the eligible professional need only request an exemption once.

However, for group practices, according to the CY 2011 PFS final rule, a single individual is designated as the single contact person for that group practice. Because, this individual has previously been chosen to act on behalf of the group for issues relating to the eRx Incentive Program, the contact person for the respective group practice must submit the request for an exemption for the respective group practice under these finalized significant hardship exemption categories. In submitting the request for an exemption under these finalized significant hardship exemption categories, this contact person is attesting to the accuracy of the information provided on behalf of the group practice.

Comment: One commenter suggested that we develop a tool that allows for the submission of supporting documentation, should additional information need to be submitted in order to thoroughly review a request for an exemption.

Response: While we agree that such a tool would be useful, at this time, it is not technically feasible for us to develop an upload function on the Web-based tool in time to receive supporting documentation. Despite our inability to provide an upload tool for submitting additional documentation, we note that all required information for a request for an exemption may be provided on the Web-based tool. In the event that we specifically requests additional documentation in order to thoroughly review an exemption request though, the eligible professional will send this documentation to us via mail.

Comment: One commenter suggested that CMS develop the submission tool in such a way as to prevent an eligible professional from submitting incomplete information. Another commenter suggested that we develop the Web-based tool to be user friendly.

Response: It is our intention that the Web-based tool be easily navigable. This includes indicating which fields are required for the eligible professional to complete in order to submit a complete request for a significant hardship exemption. We also intend to provide additional guidance for eligible professionals to learn how to navigate through the Web-based tool for purposes of submitting a significant hardship exemption request and to minimize the potential for errors.

Comment: Some commenters stated that we should encourage eligible professionals to submit more than one significant hardship exemption, should more than one apply.

Response: While an eligible professional need only request a significant hardship exemption to the 2012 eRx payment adjustment under one category, we are allowing eligible professionals to request a significant hardship exemption under more than one exemption category, should more than one category apply. While an eligible professional will only be required to select one applicable significant hardship exemption category when entering their request in the Web-based tool, they can include the other categories that apply in their justification statement should more than one category apply.

Comment: One commenter stated that we should encourage eligible professionals who have already reported the eRx measure during the applicable 2012 eRx payment adjustment payment reporting period to apply for a significant hardship exemption, should one apply.

Response: We did not propose to limit the pool of eligible professionals who can apply for an exemption request under the finalized significant hardship exemption categories. If an eligible professional believes that he or she qualifies for an exemption under one or more of the significant hardship exemption categories for the 2012 eRx payment adjustment, he or she may submit a request for an exemption regardless of whether he or she attempted to report the eRx measure for purposes of the 2012 eRx payment adjustment. As noted previously, all requests for a significant hardship exemption from the 2012 eRx payment adjustment will be reviewed on a case-by-case basis.

Comment: One commenter stated that CMS should provide a resource to address questions eligible professionals may have about submitting significant hardship exemption requests.

Response: We appreciate the commenter's feedback. We note that questions regarding use of the Web-based tool may be directed to the Quality Net Help Desk. The Quality Net Help Desk may be contacted via telephone at 1–866–288–8912 or via e-mail at *Qnetsupport@sdps.org*. Further information on the QualityNet Help Desk is available at *https://www.cms.gov/ERxIncentive/11_HelpDeskSupport.asp#TopOfPage.*

Comment: Some commenters stated that CMS should, prior to allowing for submission of significant hardship requests, notify each eligible professional of the following: (1) Whether an eligible professional falls under a limitation to the 2012 eRx payment adjustment that was finalized in the 2011 PFS Final Rule and described in section II.B.1 of this final rule and (2) whether an eligible professional has met the criteria for being a successful electronic prescriber for the 2012 eRx payment adjustment.

Response: We appreciate the commenter's feedback. However, it is not technically feasible for us to provide notification to each eligible professional as to whether the 2012 eRx payment adjustment applies or whether an eligible professional has met the criteria for being a successful electronic prescriber for the 2012 eRx payment adjustment prior to the deadline for submitting a significant hardship request. Claims for dates of service within the 2012 eRx payment adjustment reporting period (that is, January 1, 2011 through June 30, 2011) are still being processed and analyzed.

Furthermore, we note that the burden of requesting an exemption to the 2012 eRx payment adjustment under the finalized significant hardship exemption categories lies with the eligible professional or group practice.

Comment: Some commenters stressed the importance of providing sufficient education and outreach so that eligible professionals are aware of the finalized proposals relating to the addition of significant hardship exemption categories, as well as the process for submitting significant hardship requests for the 2012 eRx payment adjustment. Some commenters suggested that we work with physician organizations to inform eligible professionals of these changes.

Response: We agree and intend to provide education and outreach opportunities to inform eligible professionals of the changes to the program we are finalizing in this final rule. We also plan to work with organizations outside of CMS to ensure that the provider community is aware of these changes.

Comment: One commenter suggested that CMS work to avoid the reprocessing of claims.

Response: We appreciate the commenter's feedback. We will work to avoid the reprocessing of claims. We intend to complete our review of the request for exemptions under the significant hardship exemption categories finalized in this final rule and the CY 2011 PFS final rule in time to instruct the carrier/MACs as to those eligible professionals or group practices we determine are exempted from the 2012 eRx payment adjustment. We would like to be able to process all such requests before we begin making the claims processing systems changes later this year to adjust eligible professionals' or group practices' payments starting on January 1, 2012. However, we anticipate that, in some cases, particularly in instances where eligible professionals submit significant hardship exemption requests closer towards the November 1, 2011 deadline, we may not be able to complete our review of the requests before the claims processing systems updates are made to begin reducing eligible professionals' and group practices' PFS amounts in 2012. In such cases, if we ultimately approve the eligible professional or group practice's request for a significant hardship exemption after January 1, 2012, we would need to reprocess all claims for services furnished up to that point in 2012 that were paid at the reduced PFS amount, which we anticipate may take several months. In order to avoid the reprocessing of claims, we encourage eligible professionals who wish to submit a significant hardship exemption request to do so as soon as possible, rather than waiting until the November 1, 2011 deadline to submit such a request.

Comment: One commenter stated that submitting significant hardship exemption requests via mail would be too burdensome.

Response: We appreciate the commenter's feedback. Based on the comments received, we believe the Web-based tool is the most effective way to receive and process significant hardship exemption requests. We are only allowing individual eligible professionals to submit a significant hardship exemption request via the Web-based tool.

Comment: One commenter sought clarification and instructions as to how to request an exemption under the significant hardship exemption categories via the Web-based tool and asked how we will provide a case-by-case review of these requests.

Response: We appreciate the commenter's feedback. Instructions on how to access the Web-based tool and request an exemption will be available on the eRx Incentive Program Web site at *http://www.cms.gov/ERxIncentive/*. With respect to how we will review all exemption requests, given the requirement that we do so on a case-by-case basis, we expect that each review will be tailored to the specific case presented.

After considering all the comments received and for the reasons stated previously, we are finalizing the following process to request a significant hardship exemption from the 2012 eRx payment adjustment under any of the categories (including multiple categories, if applicable) that we are finalizing in this final rule:

- Identifying information which include the TIN, NPI, name, mailing address, and e-mail address of all affected eligible professionals.
- The significant hardship exemption category(ies) above that apply.
- A justification statement describing how compliance with the requirement for being a successful electronic prescriber for the 2012 eRx payment adjustment during the reporting period would result in a significant hardship to the eligible professional or group practice (as was previously described).
- An attestation of the accuracy of the information provided.

Individual eligible professionals must submit significant hardship exemption requests using a Web-based tool only. Information on how to access the Web-based tool as well as detailed instructions for applying for a significant hardship exemption will be available on the eRx Incentive Program Web site at *http://www.cms.gov/erxincentive/*.

Although in the June 2011 proposed rule (76 FR 31552), we proposed to allow group practices participating in the eRx Incentive Program as an eRx GPRO to also submit an exemption request via the Web-based tool, for technical reasons, we cannot allow group practices to submit significant hardship exemption requests using this Web-based tool. In the proposed rule, we also stated that, if not technically feasible to use a Web-based tool, an eligible professional or group practice may submit an exemption request via mail. As such, group practices who wish to submit an exemption request under one or more of the finalized 2012 eRx payment adjustment significant hardship exemption categories must submit this request via a mailed letter containing all of the information specified in the bullet points previously listed. More information on how group practices may request a significant hardship via mail, such as the mailing address for submitting this request, will be available on the eRx Incentive Program Web site at *http://www.cms.gov/erxincentive/*.

Comment: Some commenters asked us to establish a process whereby an eligible professional or group practice may appeal a denial of a request for an exemption from the 2012 eRx payment adjustment under the finalized significant hardship exemption categories.

Response: We appreciate the commenters' feedback. We will perform a case-by-case review of each request for an exemption to the 2012 eRx payment adjustment. We believe that this review of a request will be sufficient to determine whether an eligible professional or group practice should be granted the exemption. Therefore, we are not providing a means for reconsideration of our determination to approve or deny exemption requests. We note that, although there is no reconsideration of our determination regarding an exemption, eligible professionals and group practices may contact the QualityNet Help Desk should they have additional questions regarding our determination.

5. Deadline for Submission of Significant Hardship Exemption Requests for the 2012 eRx Payment Adjustment

We proposed that the eligible professional or group practice must submit the hardship request by no later than October 1, 2011, which, if submitted by mail means postmarked no later than October 1, 2011 (76 FR 31553). We also proposed to extend the deadline for submitting requests for consideration for the two significant hardship exemption category categories (that is, eligible professional or group practice practices in rural areas with limited high speed internet access and eligible professional or group practice practices in an area with limited available pharmacies for electronic prescribing) for the 2012 eRx payment adjustment that were finalized in the CY 2011 PFS final rule (75 FR 73564 through 73565) to October 1, 2011.

We also considered providing eligible professionals and group practices with additional time to submit requests for a significant hardship exemption under the proposed additional categories but stated that we believed that doing so might result in the need to reprocess claims for 2012 services for eligible professionals. We also proposed a submission deadline for significant hardship exemption requests no later than 5 business days after the effective date of the final rule to the extent the final rule was not effective by October 1, 2011, and sought comments whether such time would be adequate.

Comment: Some commenters stated that CMS will be overwhelmed by requests for significant hardship exemption categories, even with the creation and use of a Web-based tool, and, as a result, will not be able to timely review all significant hardship exemption requests.

Response: Since this is the first payment adjustment implemented under the eRx Incentive Program, we cannot determine how many requests we will receive. However, we will make every effort to review and process requests for significant hardship exemption categories in a manner as to avoid the reprocessing of claims.

Comment: Several commenters supported our proposal to extend the deadline for submitting significant hardship exemption requests for purposes of the 2012 eRx payment adjustment to October 1, 2011. Several commenters stated that a deadline of 5 business days after the effective date provides insufficient time for eligible professionals to be informed of and learn how to request a significant hardship exemption. Therefore, these commenters suggested other deadlines that they believe would allow for sufficient time for eligible professionals to be informed of and request an exemption. Some commenters suggested that eligible professionals and group practices be given at least 30 or 60 days after the effective date of the rule to submit significant hardship requests. Some commenters asked that the deadline for submitting a significant hardship exemption be extended to December 31, 2011. One commenter asked that the deadline for submitting requests for significant hardship exemption categories be extended to 180 days following publication of this final rule.

Response: We appreciate the commenters' feedback. We understand the commenters' concerns and believe it is important to provide eligible professionals with sufficient time to be informed of our finalized changes to the eRx Incentive Program for CY 2011. In order to ensure that eligible professionals are fully informed about these significant hardship exemption categories to the 2012 eRx payment adjustment, we are finalizing a deadline of November 1, 2011 for eligible professionals to submit a significant hardship request under the finalized significant hardship exemption

categories for the 2012 eRx payment adjustment.

Although we still believe the October 1, 2011 deadline would provide sufficient time for eligible professionals to be informed of and request an exemption, we are finalizing an extended deadline of November 1, 2011 to provide eligible professionals with more time to submit requests for a significant hardship exemption. Eligible professionals and group practices do not need to wait until the effective date of this final rule to submit a request for an exemption from the 2012 eRx payment adjustment. Rather, eligible professionals and group practices may begin submitting exemption requests immediately following the display of this final rule. As such, we believe that eligible professionals will have ample time to submit an exemption request.

Comment: Some commenters asked to align the deadline for submitting significant hardship exemption requests under the eRx Incentive Program with the deadline for achieving meaningful use under the Medicare or Medicaid EHR Incentive Programs.

Response: We appreciate the commenters' feedback. However, it is not technically feasible for us to extend the deadline for submitting significant hardship exemption category requests past November 1, 2011 in order to align it with the deadline for achieving meaningful use under the Medicare or Medicaid EHR Incentive Programs which for payment year 2011 does not occur until 2012. In order to avoid retroactive payments and claims reprocessing, we must allow for sufficient time to analyze the request and make the necessary system changes prior to January 1, 2012.

After considering the comments received and for the reasons we explained previously, we are finalizing a deadline of November 1, 2011, for the submission of significant hardship exemption requests for purposes of the 2012 eRx payment adjustment. Therefore, an individual eligible professional must submit his or her request for a request for a significant hardship exemption via the Web-based tool by November 1, 2011. Please note that eligible professionals who wish to request a significant hardship exemption for one of the two significant hardship exemption categories that were previously finalized in the CY 2011 PFS final rule (75 FR 73564 through 73565) will not be able to do so via claims-based submission of a G-code, as the June 30, 2011 deadline for requesting the two established significant hardship categories in this manner has passed. Group practices must submit a request for a significant hardship exemption via letter that must be postmarked no later than November 1, 2011.

We are implementing a deadline of November 1, 2011, and not later, because we seek to complete our review of the requests in time to instruct the carriers/MACs as to those eligible professionals or group practices that are not subject to the 2012 eRx payment adjustment. We would like to be able to process all such requests before we begin making the claims processing systems changes later this year to adjust eligible professionals' or group practices' payments starting on January 1, 2012. However, we anticipate that, in some cases, we may not be able to complete our review of the requests before the claims processing systems updates are made to begin reducing eligible professionals' and group practices' PFS amounts in 2012. In such cases, if we ultimately approve the eligible professional's or group practice's request for a significant hardship exemption, we will need to reprocess all claims for services furnished up to that point in 2012 that were paid at the reduced PFS amount.

Once we have completed our review of the eligible professional's or group practice's request and made a decision, we will notify the eligible professional or group practice of our decision and all such decisions will be final.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Related to Changes to the 2011 eRx Measure

We do not believe there is any burden associated with the proposed changes to the 2011 eRx measure as the changes solely clarify whether we consider Certified EHR Technology to meet the technological requirements of the eRx measure and do not change the reporting requirements for purposes of reporting the eRx quality measure for the 2011 eRx incentive and 2013 eRx payment adjustment.

B. ICRs Regarding Additional Significant Hardship Exemption Categories for the 2012 eRx Payment Adjustment

We believe that any burden associated with submitting the hardship exemption requests for the additional categories we proposed would be minimal and would be limited to the time and effort associated with gathering the requested information described in section II.B.4 of this final rule and submitting the information to CMS in the specified form and manner. Whether the application can be submitted online or mail, we do not anticipate it taking more than a 2 hours per eligible professional or group practice to review the significant hardship exemption, determine which category(ies) applies to their particular situation, gather the information needed for the justification, and then complete and submit the information to CMS.

To provide an estimate of the burden associated with submitting a hardship exemption request, we need to determine the approximate number of physicians and eligible professionals that could be subject to the eRx payment adjustment in 2012 as well as the number of eligible professionals that could submit a hardship exemption request. Based on Medicare Part B claims data, it is estimated that approximately 209,000 eligible professionals could potentially be subject to the 2012 eRx payment adjustment unless they become a successful electronic prescriber (that is, report the eRx measure at least 10 times during the 6-month reporting period) or receive a significant hardship exemption. Thus, the maximum total number of eligible professionals that could potentially need to request a significant hardship exemption is believed to be approximately 209,000. However based on participation numbers from previous eRx Incentive Program years, we predict that the number of eligible professionals impacted will in fact be lower. In 2009, 92,132 eligible professionals

participated in the eRx program and preliminary data for 2010 indicates that 100,444 professionals have participated in the eRx Incentive Program. Based on this data, we have determined that it is more accurate to estimate that approximately 209,000 eligible professionals could potentially submit a significant hardship exemption request as over 100,000 eligible professionals are already participating in the program. While we do not have a precise estimate of how many of the eligible professionals that are not able to be successful electronic prescribers will request a significant hardship, we do know that since the hardship exemption categories will not apply to all eligible professionals since they represent specific circumstances. Therefore, for purposes of this burden estimate, we will assume that, at a minimum, approximately 10 percent of the 209,000 eligible professionals that could potentially request a significant hardship exemption will do so. This brings our minimum estimated number of eligible professionals impacted to approximately 10,900. Based on our estimate that the time needed to collect and report the information requested will be 2 hours, we believe that the total burden associated with requesting a significant hardship exemption will range from approximately 21,800 hours (10,900 eligible professionals × 2 hours per eligible professional) to 418,000 hours (209,000 eligible professionals × 2 hours per eligible professional). Based on an average group practice labor cost of $58 per hour, we predict the annual burden cost to be between approximately $1,264,400 ($58 per hour × 21,800 hours) and $24,244,000 ($58 per hour × 418,000 hours).

Comment: Some commenters suggested that CMS' estimates regarding how many eligible professionals will apply for a significant hardship exemption for the 2012 eRx payment adjustment is too low.

Response: We appreciate the commenters' feedback. While our minimum estimate are based on our participation numbers from the 2009 eRx Incentive Program, which is the latest complete participation information available for the eRx Incentive Program at this time, we note that the maximum estimate was based on an analysis of 2010 claims data to determine how many MDs, DOs, podiatrists, nurse practitioners, and physician assistants have at least 100 denominator eligible visits and meet the 10% threshold in a 6-month period. Thus, the maximum estimate assumes that every eligible professional who needs to report the eRx measure or be subject to the payment adjustment will apply for a significant hardship exemption. Unfortunately, because we never implemented a payment adjustment under the eRx Incentive Program before, we cannot precisely estimate how many eligible professionals will apply for a significant hardship exemption.

IV. Regulatory Impact Statement

This final rule includes changes to the eRx Incentive Program. The first change we are finalizing involves modifying the eRx quality measure used for certain reporting periods in CY 2011 to address uncertainties related to the technological requirements of the Medicare eRx Incentive Program. The eRx measure is being revised to indicate whether an eligible professional has adopted a qualified electronic prescribing system, which is a system that meets the four functionalities discussed above, or Certified EHR Technology as defined at 42 CFR 495.4 and 45 CFR 170.102. The second change we are finalizing is the adoption of additional significant hardship exemption categories for the 2012 eRx payment adjustment. The additional significant hardship exemption categories we are finalizing for the 2012 e Rx payment adjustment include: (1) Eligible professionals who register to participate in the Medicare or Medicaid EHR Incentive Program and adopt Certified EHR Technology; (2) the inability to electronically prescribe due to local, State, or Federal law; (3) limited prescribing activity; and (4) insufficient opportunities to report the eRx measure due to limitations of the measure's denominator. Finally, this final rule provides an extension of the deadline for submitting requests for exemptions from the 2012 eRx payment adjustment under the additional significant hardship exemption categories, as well as the two significant hardship codes established in the CY 2011 PFS final rule with comment period: (1) The eligible professional practices in a rural area without sufficient high speed internet access; and (2) the eligible professional practices in an area without sufficient available pharmacies for electronic prescribing.

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that the impact of the changes will be $30 million for fiscal year (FY) 2012, net of premium offset based on the FY 2012 President's budget baseline and $20 million for FY 2013. Therefore, this final rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. A majority of the physicians and other eligible professionals affected by this final rule are small entities either by being nonprofit organizations or by meeting the Small Business Administration size thresholds for a small healthcare business (having revenues of less than $7.0 million to $34.5 million in any 1 year). While we do not have precise estimates, we believe this final rule will affect a substantial number of small entities (that is, several thousand or more).

We interpret the requirement for preparation of an Initial Regulatory Flexibility Analysis as applying to final rules that impose significant economic burden. The Office of the Chief Council for Advocacy within the Small Business Administration believes that the requirement applies whether the economic impact is positive or negative. Regardless, we normally prepare a voluntary analysis when final rules will have a significant positive impact. In this case, the change to the eRx measure under the eRx Incentive Program for purpose of reporting for the 2011 eRx incentive and the 2013 eRx payment adjustment and the additional significant hardship exemption categories, if applicable, for purposes of the 2012 eRx payment adjustment will

reduce burden for eligible professionals. The modification to the eRx measure eliminates any uncertainty as to whether eligible professionals who are participating in both the eRx Incentive Program and the EHR Incentive Program can use the Certified EHR Technology that they adopted for the EHR Incentive Program to electronically prescribe under the eRx Incentive Program. Therefore, there is no ambiguity as to whether eligible professionals can use the same technology for both programs and less time and effort spent by eligible professionals to determine whether the Certified EHR Technology they have adopted for purposes of the EHR Incentive Program could be used to meet the eRx quality measure under the eRx Incentive Program. It is difficult to estimate the precise economic impacts of these changes on the affected entities.

We believe that the additional significant hardship exemption categories for the 2012 eRx payment adjustment we are finalizing in this final rule will reduce the number of eligible professionals that will otherwise be subject to a 1.0 percent adjustment in the PFS amount for covered professional services furnished in 2012. Also, the changes we are finalizing will continue to encourage adoption of electronic prescribing in the interest of improving the medication prescription process while acknowledging circumstances that may prevent physicians and other professionals from successfully participating in the eRx Incentive Program. Based on 2010 Medicare Part B claims data, we believe approximately 209,000 eligible professionals will need to either be a successful electronic prescriber or request a hardship exemption to avoid the 2012 eRx payment adjustment. However, we are unable to provide a precise estimate as to the number of eligible professionals, out of the total 209,000, that will potentially request a significant hardship exemption for one of the hardship exemption categories. While we are aware, from public comments received in response to the CY 2011 PFS proposed rule and final rule with comment period, correspondence, inquiries received by our help desk, and comments made by eligible professionals on our national provider calls, open door forums, and a February 9, 2011 Town Hall Meeting, that there are eligible professionals who have expressed their inability to meet the successful electronic prescriber requirements for the 2012 eRx payment adjustment for one or more of the circumstances addressed by the additional significant hardship exemption categories, we are not able to quantify in detail how many eligible professionals these additional significant hardship exemption categories could apply to since each eligible professional's individual circumstances are unique. We believe that any cost associated with requesting a significant hardship exemption under these categories will be minimal since it will be limited to the time and effort associated with submitting an exemption request based on a finalized significant hardship exemption category from the 2012 eRx payment adjustment either via the Web tool or by mail. We believe that any cost associated with requesting a significant hardship exemption will, if applicable to the eligible professional, be offset by the eligible professional avoiding the payment adjustment in 2012.

Overall, we estimate that the impact of the changes we are finalizing will be $30 million for FY 2012, net of premium offset based on the FY 2012 President's budget baseline and $20 million for FY 2013.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. The eRx Incentive Program does not apply to small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This rule would have no consequential effect on State, local, or tribal governments or on the private sector. Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects for 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 414 as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(l) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(l)).

Subpart B—Physicians and Other Practitioners

■ 2. Section 414.92 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 414.92 Electronic Prescribing Incentive Program.

* * * * *

(c) * * *

(2) * * *

(ii) *Significant hardship exception.* CMS may, on a case-by-case basis, exempt an eligible professional (or in the case of a group practice under paragraph (e) of this section, a group practice) from the application of the payment adjustment under paragraph (c)(2) of this section if, CMS determines, subject to annual renewal, that compliance with the requirement for being a successful electronic prescriber would result in a significant hardship. Eligible professionals (or, in the case of a group practice under paragraph (e) of this section, a group practice) may request consideration for a significant hardship exemption from the 2012 eRx payment adjustment if one of the following circumstances apply:

(A) The practice is located in a rural area without high speed internet access.

(B) The practice is located in an area without sufficient available pharmacies for electronic prescribing.

(C) Registration to participate in the Medicare or Medicaid EHR Incentive Program and adoption of Certified EHR Technology.

(D) Inability to electronically prescribe due to local, State or Federal law or regulation.

(E) Limited prescribing activity.

(F) Insufficient opportunities to report the eRx measure due to limitations of the measure's denominator.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 25, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 26, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–22629 Filed 8–31–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 154

[CMS–9999–F]

RIN 0938–AR26

Rate Increase Disclosure and Review: Definitions of ''Individual Market'' and ''Small Group Market''

AGENCY: Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends a May 23, 2011, final rule entitled ''Rate Increase Disclosure and Review''. The final rule provided that, for purposes of rate review only, definitions of ''individual market'' and ''small group market'' under State rate filing laws would govern even if those definitions departed from the definitions that otherwise apply under title XXVII of the Public Health Service Act (PHS Act). The preamble to the final rule requested comments on whether this policy should apply in cases in which State rate filing law definitions of ''individual market'' and ''small group market'' exclude association insurance policies that would be included in these definitions for other purposes under the PHS Act. In response to comments, this final rule amends the definitions of ''individual market'' and ''small group market'' that apply for rate review purposes to include coverage sold to individuals and small groups through associations even if the State does not include such coverage in its definitions of individual and small group market. This final rule also updates standards for health insurance issuers regarding disclosure and review of unreasonable premium increases under section 2794 of the Public Health Service Act.

DATES: *Effective date.* This rule is effective on November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Sally McCarty, (301) 492–4489 (or by e-mail: *ratereview@hhs.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (Pub. L. 111–152) was enacted on March 30, 2010. In this preamble, we refer to the two statutes collectively as the Affordable Care Act. The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

Section 1003 of the Affordable Care Act adds a new section 2794 of the PHS Act, which directs the Secretary of the Department of Health and Human Services (the Secretary), in conjunction with the States, to establish a process for the annual review of ''unreasonable increases in premiums for health insurance coverage.'' The statute provides that health insurance issuers must submit to the Secretary and the applicable State justifications for unreasonable premium increases prior to the implementation of the increases. Section 2794 of the PHS Act does not apply to grandfathered health insurance coverage, nor does it apply to self-funded plans.

On December 23, 2010, we published a Notice of Proposed Rulemaking to implement section 2794. Among other things, because of unique characteristics of State rate review and for purposes of administrative efficiency, we proposed to adopt definitions of the individual and small group markets that would defer to definitions set forth in State rate filing laws. We did not discuss in the proposed rule, or anticipate, how association policies would be treated under the proposal. Regardless, we received a number of comments objecting to the definitions as they would apply to association plans. On May 23, 2011, we published a final rule with comment period (76 FR 29964), in which we specifically solicited further comments on amending the definitions of ''individual market'' and ''small group market'' in § 154.102 to include coverage sold to individuals and small groups through associations in all cases.

We received 30 comments in the comment period. Commenters included the National Association of Insurance Commissioners (NAIC); a State insurance regulator; many consumer and public interest organizations; associations sponsoring insurance plans for their individual and employer members; health care providers; health insurance issuers and related trade associations (collectively, ''industry''); and others. After consideration of the comments, we are amending the May 23, 2011 final rule to provide that individual and small employer policies sold through associations will be included in the rate review process, even if a State otherwise excludes such coverage from its definitions of individual and small group market coverage.

II. Provisions of the May 23, 2011 Final Rule With Comment and Responses to Comments

In the May 23, 2011 final rule, we solicited comments regarding whether to amend the definitions of ''individual market'' and ''small group market'' in § 154.102 to include coverage sold to individuals and small groups through associations in the rate review process, even if the State excludes such coverage from its definitions of individual and small group market coverage. Additionally, we solicited comments to address the following questions:

1. Do States currently review rate increases for association and out-of-State trust coverage sold to individuals and small groups, regardless of whether the policies are sitused in or outside of their States?

2. How many rate filings do States receive for association and out-of-State trust coverage?

3. How prevalent are association and out-of-State trust coverage arrangements? What percentage of individual market and small group market business is sold through associations and out-of-State trusts?

4. In which States is association and out-of-State trust coverage commonly purchased by individuals and small groups? Where are out-of-State trusts typically situated?

5. Why do some individuals and small employers purchase coverage through associations and out-of-State trusts rather than through the traditional markets? Are there particular groups of individuals or types of small employers that typically purchase coverage through associations and out-of-State

trusts? What organizations (other than issuers) typically sponsor, endorse, or market association and out-of-State trust arrangements?

6. How do rate increases for association and out-of-State trust coverage sold to individuals and small groups compare to rate increases in the traditional market? What explains the differences (if any) between rate increases for association and out-of-State trust coverage and traditional market coverage?

Comment: Most commenters, including State regulators, consumer advocates, the insurance industry representatives, and three affected associations, supported including individual and small group association coverage in the definitions of ''individual market'' and ''small group market'' in § 154.102, even where such coverage was not included in those definitions under State rate filing laws, so that more individuals and small employers would benefit from rate review. According to comments from consumer advocates and some of the affected associations, if association coverage was not included in the rate review rule, the association coverage market would be treated differently from traditional markets in some States, and consumers in these plans would not benefit from the Affordable Care Act's rate review process. State regulators and consumer advocates noted that, in the past, State law exceptions for association health plans had allowed them to avoid market reforms such as guaranteed issue and community rating and permitted them to ''cherry pick'' individuals and groups with favorable risk profiles. A State regulator also noted that exempting coverage sold through the associations from the regulatory process leads to a concentration of poorer risk in non-association coverage in community rating States. Based on past State experience with association coverage exceptions, the NAIC advised against allowing exceptions for association coverage under the market definitions of § 154.102. Moreover, consumer advocates and one issuer emphasized the importance of having consistent standards across association health plans and the rest of the market to ensure that issuers competed on a level playing field.

Many comments also discussed the importance of encouraging States to regulate association plans in the same way as the traditional market. Several consumer advocates and State insurance officials cited a study [1] concluding that two-thirds of the States regulate associations differently from other plans in the same market and about one-half of the States entirely or partially exempt national associations from State regulation. In States where associations are not regulated, this differential treatment gives residents little recourse if their association health plan changes its terms of coverage, denies claims, or completely ceases operation. One consumer advocate further highlighted that individuals and small businesses often buy health plans through associations with little knowledge of the protections that they do or do not have in these plans. In addition, the consumer noted that many States cede the regulatory and oversight roles to other States when an association is headquartered elsewhere, allowing association health plans to operate without as much oversight as plans in the traditional market. This can result in different consumers in the same State being subject to different levels of protections depending on whether the coverage is sold through an association and also on where the association is sitused.

While most comments were in favor of including association coverage in the rate review process even where State rate filing laws did not include such coverage in definitions of individual market and small group market, CMS received five comments that opposed changing the current policy under § 154.102. Four of these comments came from associations, and one comment came from an association professional membership organization. Three associations discussed the history of associations in their State and indicated that their State treats association health plans as large group plans not subject to individual or small group requirements for all purposes, not just rate review. These associations expressed concern about potential logistical and administrative burdens for association plans were they to be regulated as small group market coverage at the State and Federal levels. (We note that even if we were not making this amendment to the final rate review rule, this State practice would differ from longstanding guidance on the treatment of association coverage for all other purposes under title XXVII of the PHS Act.) In addition, all five commenters asserted that, because association health plans have a larger insurance pool, they should not be regulated the same as plans and policies in individual and small group markets. However, a regulator from the same State as three of the associations opined that successful implementation of the Affordable Care Act depended on having a stable health insurance market, which could be jeopardized if issuers could avoid the various individual and small group market requirements by offering coverage through associations.

Response: In light of these comments, we are amending the definitions of ''individual market'' and ''small group market'' in this final rule to include individual and small group coverage sold through associations in the rate review process. This amendment applies to rates for association coverage that are filed, or are effective in States without filing requirements, on or after November 1, 2011. The majority of commenters supported extending the rate review rule to include such association coverage; no commenter offered a persuasive reason why associations should be treated differently in connection with the review of rate increases than they are treated generally under the PHS Act. To the extent that issuers set premiums for members within an association differently based on their own health status or other factors, these association members are essentially purchasing individual or small group coverage and should not be treated differently than other individuals or small groups not buying coverage through an association. Further, excluding individual and small group coverage sold through associations from the rate review process creates an unlevel playing field between issuers that sell coverage through associations and those that do not. Lastly, excluding association coverage from the rate review process raises the risk of creating incentives that could lead to adverse selection. We note that nothing in this amended rule prevents individuals and employers from enjoying the benefits of belonging to an association and obtaining health insurance coverage as a benefit of their association membership.

All other requirements in title XXVII of the PHS Act (for example, section 2718's medical loss ratio requirements) are governed by the individual and small group market definitions in section 2791 of the PHS Act. Under section 2791's definitions, individuals and employers who purchase health insurance coverage through associations generally have been and continue to be entitled to the same rights and protections as those who purchase coverage in the individual and group markets. CMS Insurance Standards Bulletin 02–02 (August 2002) stated that

[1] Mila Kofman, Kevin Lucia, Eliza Banget, Karen Politz, ''Association Health Plans: What's All the Fuss About?'' *Health Affairs*, Vol. 25, No. 6, 2006.

''the test for determining whether health insurance coverage offered through an association is group market coverage or individual market coverage, for purposes of [PHS Act] title XXVII, is the same test as that applied to health insurance offered directly to employers or individuals.''

The decision to propose somewhat different definitions of individual and small group market for the purposes of rate review was based on the discretion under section 2794 of the PHS Act to specify which markets are subject to this rate review rule, and our desire to minimize disruption for the States and enable as many of them as possible to have Effective Rate Review Programs. In proposing to follow State filing law definitions, we did not take into account the substantial difference this could make with respect to association coverage in States with filing law definitions of individual market and small group market that exclude association coverage.[2] However, we are amending the regulation to make clear that for purposes of rate review, the treatment of association coverage is identical to how it is treated for other title XXVII requirements, so that individuals and small employers who purchase coverage through an association have the same set of protections they would receive if they had purchased coverage outside of an association. We note that in amending these definitions, we do not change the role offered to States to conduct Effective Rate Review Programs under the final rule which aims to minimize disruption of State rate review processes.

Comment: A trade association noted that section 3(5) of the Employee Retirement Income Security Act (ERISA) defines the term ''employer'' so that an association of employers could be deemed an ''employer'' sponsoring a group health plan under some circumstances. In such a case, the commenter recommended that the association coverage should be treated as one group health plan for purposes of the rate review process.

Response: As indicated by the commenter, the market definitions in section 2791 of the PHS Act are derived from definitions of employer and employee welfare benefit plan in ERISA section 3. While the proposed rule and current final rule adopt a different policy for rate review purposes with respect to association coverage than would apply under the PHS Act for other purposes, we are amending the final rule to apply the general PHS Act policy on association coverage under the rate review regulation, as an exception to the general rule that State definitions govern. Accordingly, if an association is, in fact, sponsoring a group health plan subject to ERISA, the association coverage should be considered to be one group health plan and the number of employees covered by the association would determine the group size for purposes of determining whether the group health plan is sponsored by a small employer and subject to the rate review process.

In most situations involving association coverage, the group health plan will exist at the individual employer level and not at the association level, in which case the size of the individual employers in the association will determine whether the association coverage is subject to the rate review process. The Department of Labor (DOL) has jurisdiction over ERISA group health plans and, for private sector entities, the determination of whether the group health plan exists at the association level or the employer level is made under ERISA. DOL has prepared a booklet in an effort to address questions that have been raised under ERISA concerning ''multiple employer welfare arrangements.'' This booklet may assist stakeholders in identifying situations where an ERISA group health plan may exist at the association level. See DOL MEWA Guide (*http://www.dol.gov/ebsa/Publications/mewas.html).* Several DOL Advisory Opinions may also be helpful. *See* DOL Advisory Opinions 2001–04A (*http://www.dol.gov/ebsa/regs/aos/ao2001-04a.html*); 2008-07A (*http://www.dol.gov/ebsa/regs/aos/ao2008-07a.html*) and 2003-13A (*http://www.dol.gov/ebsa/regs/aos/ao2003-13a.html*). For example, in DOL Advisory Opinion 2008–07A, DOL stated:

''A determination whether there is a bona fide employer group or association for this ERISA purpose must be made on the basis of all the facts and circumstances involved. Among the factors considered are the following: how members are solicited; who is entitled to participate and who actually participates in the association; the process by which the association was formed, the purposes for which it was formed, and what, if any, were the preexisting relationships of its members; the powers, rights, and privileges of employer members that exist by reason of their status as employers; and who actually controls and directs the activities and operations of the benefit program. The employers that participate in a benefit program must, directly or indirectly, exercise control over the program, both in form and in substance, in order to act as a bona fide employer group or association with respect to the program.

The definition of 'employee welfare benefit plan' in ERISA is grounded on the premise that the person or group that maintains the plan is tied to the employers and employees that participate in the plan by some common economic or representation interest or genuine organizational relationship unrelated to the provision of benefits.''

For more information, State regulators and other stakeholders can contact the Department of Labor's Employee Benefits Security Administration.

Comment: An association advised that a group policy for an association is issued to a trust in the State where the trust is domiciled and certificates are issued to insured parties who may reside in other States. In such a case, the association indicated that if the State where the trust is domiciled has a rate review process, that State should be responsible for the rate review of the entire program and should apply the same rating principles to the entire association, thus making it easier for compliance. Consumer advocates and a health insurance issuer, on the other hand, advised that rate increases of all individual and small group coverage sold in a State should be reviewed by that State, regardless of where the association is domiciled, to ensure that the individuals and employers in the State are protected by their local insurance department.

Response: A State's ability to review rate increases of coverage sold through associations domiciled in another State is dependent solely upon State law. Accordingly, it will be up to each individual State to determine whether its laws provide the authority to review proposed rate increases of individual and small group health insurance coverage sold through associations domiciled in another State. It should be noted that the rate review process set forth in the May 23, 2011 final rule sets standards so that the reporting and review process is similar in all States which should decrease the burden of having to file a rate increase in multiple States.

Comment: One insurance issuer commented that CMS should keep bona

[2] As noted above, there is a long, consistent history of how associations have been treated with respect to the requirements added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). However, prior to enactment of the Affordable Care Act, none of those requirements related to rate review, and for HIPAA purposes it was irrelevant how a State defined its markets for rate review purposes. Therefore we were not familiar with the possible ramifications for associations.

fide associations out of the rate review process because the bona fide association marketplace operates much like the large group market, in that trustees of associations are sophisticated purchasers who exercise their fiduciary responsibility to their members. This commenter therefore felt that, to prevent an undue burden on the rate review process, bona fide associations should be regulated differently from non-bona fide associations. An association indicated that, if bona fide association individual and small group coverage were included in the rate review process, it would subject the affected insurance premiums to review by as many as 40 different States.

Response: Although the PHS Act recognizes bona fide associations as defined by section 2791(d)(3) [3] of the PHS Act and currently exempts them from guaranteed renewability of coverage and guaranteed availability of coverage, individual and small group coverage provided through bona fide associations are subject to every other provision and protection of title XXVII of the PHS Act without exception. Therefore, the rate review process applies to individual and small group coverage provided through bona fide associations and non-bona fide associations. It should be noted that the rate review process set forth in the May 23, 2011 rule sets standards so that the reporting and review process is similar in all States which should decrease the burden of having to file a rate increase in multiple States.

Comments: Consumer advocates commented that States should be required to review an issuer's premium-rate increases on individuals and small groups purchasing insurance through an association or out-of-State trust as a condition of having an Effective Rate Review Program. These commenters also suggested that, to the extent possible, adequate regulation of associations should be a factor in awarding Cycle II grants of the Health Insurance Rate Review Program.

Response: A State that meets the criteria for an Effective Rate Review Program, as outlined in § 154.301 will be determined to have Effective Rate Review Programs; with this amendment, this review will apply to rate increases of association coverage sold directly to individuals and small groups in that State. A State's status as an Effective Rate Review Program State in other market segments will not be affected by its status as it relates to the effective review of association coverage rate increases. For purposes of this determination, we will not take into account whether the State where an association plan has its situs reviews the rates. In order to be an Effective Rate Review Program State for association coverage, a State will have to meet the criteria specified in § 154.301(a) and (b) for review of rate filings in its State for association coverage. If a State fails to meet the criteria for association coverage, CMS will review the rate filings above the threshold for the association coverage in that State.

The Cycle II funding opportunity announcement (FOA) was posted in February of this year and applications were due August 15, 2011. In order to be eligible for an award under Cycle II, for either Phase I or II awards, a State must be able to demonstrate at the time of application that it already meets the criteria for an Effective Rate Review Program, or that with the funding resources from the grant it can achieve an Effective Rate Review Program.

To the extent that association coverage is one product type in which a State can be effective or not, it is a consideration, but effective review of association coverage is not a requirement for a Cycle II grant.

III. Provisions of This Final Rule

This final rule amends the definition of ''individual market'' and ''small group market'' in § 154.102 as follows:

We amended the definition of ''individual market'' to include coverage that would be regulated as individual market coverage (as defined in section 2791(e)(1)(A)) if it were not sold through an association. We also amended the definition of ''small group market'' to include coverage that would be regulated as small group market coverage (as defined in section 2791(e)(5)) if it were not sold through an association. This approach follows the definition that applies for other PHS Act purposes (under which an association itself will only be considered to be a group health plan if it complies with and is regulated under ERISA).

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The Collection of Information Requirements associated with the May 23, 2011 final rule were approved under OMB control number 0938–1141, with an expiration date of August 31, 2014. In the May 23, 2011 final rule, we solicited comments on whether individual and small group coverage sold through associations should be included in the rate review process. At that time, we did not include an estimate of the number of rate review filings of association coverage for the burden estimates in the PRA section of the final rule. We are now amending the burden estimates in the PRA section to reflect the additional number of filings resulting from amending this final rule.

As indicated in RIA section below, we estimate that 229 additional rate filings will be subject to the rate review process as a result of including individual and small group coverage sold through associations in the process. This increases the total number of filings subject to review from 974 to 1,203. All other estimates, including number of respondents and burden per response, have not changed from the final rule. Accordingly, the language from the PRA section of the May 2011 final rule is incorporated in this final rule and the changes in the estimates are reflected in the Revised Table A, with revised numbers highlighted in bold.

[3] *Bona fide association* means, with respect to health insurance coverage offered in a State, an association that meets the following conditions: (1) Has been actively in existence for at least 5 years. (2) Has been formed and maintained in good faith for purposes other than obtaining insurance. (3) Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of any employee). (4) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members (or individuals eligible for coverage through a member). (5) Does not make health insurance coverage offered through the association available other than in connection with a member of the association. (6) Meets any additional requirements that may be imposed under State law.

Revised Table A – Estimated Annual Burden

Regulation Section(s)	OMB Control No.	Number of Respondents	Number of Responses	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting ($)	Total Labor Cost of Reporting ($)	Total Capital/ Maintenance Costs ($)	Total Cost ($)
§154.210 ICRs Regarding State Determinations	0938-New	35	**801**	0.33	**264**	200	**52,800**	0	**52,800**
§§154.215 , and 154.220, ICRs Regarding the Rate Review Preliminary Justification Form	0938-New	417	**1,203**	11	**13,233**	200	**2,646,600**	0	**2,646,600**
§154.230 ICRs Regarding the Final Justification	0938-New	417	**1,203**	0.5	**601**	200	**120,200**	0	**120,200**
§154.230 ICRs Regarding the Final Notification	0938-New	417	**1,203**	0.5	**601**	200	**120,200**	0	**120,200**
Total		452	**4,410**		**14,699**		**2,939,800**		**2,939, 800**

V. Response to Comments

Because of the large number of public comments we receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. A discussion of the comments we received is included in the preamble of this document.

VI. Regulatory Impact Analysis

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

A. Summary

In the regulatory impact analysis (RIA) for the May 23, 2011 final rule, we discussed the proposal to amend the definitions of individual and small group markets in order for individual and small group coverage sold through associations to be subject to rate review. Although we did not include the burden of including coverage sold through associations in the final numbers for the PRA package or the RIA, an estimate was provided in the RIA for the purpose of soliciting comments on the potential burden of including individual and small group coverage sold through associations in the rate review process.

We reviewed data submitted by health insurance issuers to the NAIC and estimated that there would be 986 filings annually that would have to be submitted for individual or small group coverage sold through associations. We in turn applied the factors for non-grandfathered coverage (0.42) and filings above the 10 percent threshold (0.45), which resulted in a total of 186 additional filings that would be subject to rate review. We further estimated that 34 percent of these filings would occur in States that require prior approval before a rate increase can be implemented, in which case the rate filings are already subject to review by a State. This resulted in a final estimate of 123 additional filings above the 10 percent threshold occurring if coverage sold through associations were subject to the rate review process.

In response to our solicitation of comments on the association issue, we received from the NAIC a survey of State regulators in which the following question was asked: ''How many such rate filings does your State receive for association and out-of-State trust coverage?'' Thirty-two States responded to the survey and 14 States provided estimates that totaled 440 rate filings for association coverage on an annual basis. Most of these estimates did not distinguish between the individual and small group markets. One State indicated that no rate filings were received from associations, and the other 17 indicated that they did not track association rate filings. This data was provided by State regulators who review rate filings, as opposed to the prior data that was provided by health insurance issuers. Since State regulators are positioned to review the rate filings of all the issuers in their States, we chose to use the State data for the purpose of updating the burden estimates in this RIA. Extrapolating the 440 number from 14 States to 50 States provides an estimate of 1,570 rate filings annually for association coverage in the individual and small group markets. Using the percentages from the final rule numbers (76% small group market, 24 percent individual market), this breaks out to 377 additional filings in the individual market and 1,193 filings

in the small group market. Applying the factors for non-grandfathered coverage and filings above the 10 percent threshold results in a mid range estimate of 229 additional filings being subject to rate review.

Since this final rule directs that individual and small group coverage sold through associations be included in the rate review process, we are amending the burden estimates in the RIA to reflect the additional number of filings. The estimated number of affected entities, the burden estimates for the start-up costs and the amount of time to review each rate filing do not change from what was estimated in the RIA for the May 23, 2011 final rule. Accordingly, the RIA from the May 23, 2011 final rule is incorporated into this final rule with the only the changes being the additional number of filings discussed here and in the Federalism Statement in section D. All ranges of filing estimates were increased by 1,570, the estimated number of rate filings for association coverage, as explained above. This results in the number of 2011 filings in Table 3 for the low range estimate being increased from 6,121 to 7,691; the mid range was increased from 6,733 to 8,303; and the high range from 7,343 to 8,913. In the tables, the amended numbers are highlighted in bold.

B. Estimated Number of Rate Filings

This section of the regulatory impact assessment provides estimates of the number of filings that would be subject to review under this final rule. Below we are revising Table 3, Table 4, and Table 5 of the May 23, 2011 final rule (see 76 FR 29980 through 29982) to read as follows:

Revised Table 3: Estimated Number of Filings Subject to Review

		Individual	Small Group	Total
Estimated number of filings for 2011				
Low Range		**1772**	**5,919**	**7,691**
Mid Range		**1,948**	**6,355**	**8,303**
High Range		**2,123**	**6,790**	**8,913**
Percent of filings subject to review (non-grandfathered)				
Low Range		40%	20%	
Mid Range		54%	30%	
High Range		67%	42%	
Number of filings subject to review				
Low Range		**709**	**1184**	**1,893**
Mid Range		**1,052**	**1,906**	**2,958**
High Range		**1,422**	**2,852**	**4,274**
Estimated percentage of filings meeting or exceeding threshold				
Low Range		50%	20%	
Mid Range		60%	30%	
High Range		70%	40%	
Estimated number of filings meeting or exceeding threshold				
Low Range		**354**	**236**	**590**
Mid Range		**631**	**572**	**1,203**
High Range		**995**	**1,141**	**2,136**

C. Estimated Administrative Costs Related to Rate Review Provisions

Revised Table 4: Estimated Costs for Reporting, Record Retention, and Website Notification (Actual Dollars)

Description	Total Number of Issuers	Total Number of Reports	Estimated Total Hours (1)	Estimated Average Cost Per Hour (2)	Estimated Total Cost	Estimated Average Cost Per Issuer	Estimated Average Cost Per Report
LOW RANGE ASSUMPTIONS							
One-Time Costs	417	**590**	52,125	$200	$10,425,000	$25,000	**$17,669**
Ongoing Costs	417	**590**	2,808	$200	$561,600	$1,347	**$952**
Total Year One Costs	417	**590**	54,933	$200	$10,986,600	$26,347	**$18,621**
MID RANGE ASSUMPTIONS							
One-Time Costs	417	**1,203**	62,550	$200	$12,510,000	$30,000	**$10,399**
Ongoing Costs	417	**1,203**	**14,699**	$200	**$2,939,800**	**$7,050**	**$2,444**
Total Year One Costs	417	**1,203**	**77,249**	$200	**$15,449,800**	**$37,050**	**$12,843**
HIGH RANGE ASSUMPTIONS							
One-Time Costs	417	**2,136**	72,975	$200	$14,595,000	$35,000	**$6,833**
Ongoing Costs	417	**2,136**	27,568	$200	$5,513,600	$13,222	**$2,581**
Total Year One Costs	417	**2,136**	100,543	$200	$20,108,600	$48,222	**$9,414**

Notes: Estimated costs are stated in 2010 dollars.

(1) Estimated number of one-time start up hours and annual ongoing hours.

(2) Actuary salary/fee.

(3) Estimated Costs to the States and Federal Government Related to Rate Review Provisions.

Revised Table 5: Estimated Actuarial Rates

Estimated Actuarial Rates				
		Low	**Mid**	**High**
Principal Actuaries		$340.00	$350.00	$360.00
Support Actuaries		$200.00	$234.00	$275.00
Actuarial Analyst		$120.00	$150.00	$180.00
Administrative Support		$80.00	$100.00	$120.00
Estimated Time to Complete Average Review		**Average Time Required**		
Principal Actuaries		4.25	5.50	6.75
Support Actuaries		8.50	9.50	11.00
Actuarial Analyst		12.00	14.00	15.00
Administrative Support		9.00	9.50	12.00
Actuarial Staff Hours		24.75	29.00	32.75
Total Staff Hours		33.75	38.5	44.75
		Low	**Mid**	**High**
Estimated Cost per Review		$5,305	$7,198	$9,595
Number of Rate Reviews		**165**	**396**	**769**
Total Expected Contracting Cost		**$875,325**	**$2,850,408**	**$7,378,555**

1. Estimated Costs to States

CMS recognizes that States have significant experience reviewing rate increases. As discussed earlier in this preamble, most States have existing Effective Rate Review Programs that will meet the requirements of this regulation. Rate review grants provided by CMS are expected to increase the effectiveness of State rate review processes, but they are not a direct measure of the cost of this regulation.

CMS estimates that the cost impact on States will be small because most States currently conduct rate review. For these States, the incremental costs and requirements of this regulation will be minimal. Some States do not already have a rate review process or have a process that applies to only a portion of the individual and small group markets that this regulation addresses. In these States, the implementation costs to develop Effective Rate Review Processes at the State level can be offset by the rate review grants provided by CMS. For States not currently conducting effective rate review, HHS will conduct the review.

States with Effective Rate Review Programs will be required to report on their rate review activities to the Secretary. CMS believes that this reporting requirement will involve minimal cost. CMS estimates that reporting information from the State to CMS will require approximately 20 minutes per filing. Based on an actuary's fee of $200 per hour, CMS estimates an average cost per filing of $66. Including association coverage, the estimated cost of reporting the two-thirds of filings meeting or exceeding the 10 percent threshold (801), which are reviewed by States, is $52,866.

D. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. In CMS' view, while the requirements proposed in this final rule would not impose substantial direct costs on State and local governments, this final rule has federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining the reasonableness of rate increases for coverage that State-licensed health insurance issuers offer in the individual and small group markets.

CMS recognizes that there are federalism implications with regard to CMS' evaluation of Effective Rate Review Programs and its subsequent review of rate increases. Under Subpart C of this final rule, CMS outlines those criteria that States would have to meet in order to be deemed to have an Effective Rate Review Program. If CMS determines that a State does not meet those criteria, then CMS would review a rate increase subject to review to determine whether it is unreasonable. If a State does meet the criteria, then CMS would adopt that State's determination of whether a rate increase is unreasonable.

As indicated earlier in this preamble, we received comments from consumer advocates and State insurance officials citing a study concluding that two-thirds of the States regulate associations differently from other plans in the individual and small group market and about one-half of the States entirely or partially exempt coverage sold through national associations from State regulation. In States where individual and small group coverage sold through associations is not subject to the rate review process, we indicate in this preamble that CMS will review the rate filings for such coverage that meet the threshold. We also state that the fact that a State may not review rate filings of association coverage will not be considered in determining whether that State has an effective rate review program.

States would continue to apply State law requirements regarding rate and policy filings. State rate review processes that are similar to the Federal requirements likely would be deemed effective and satisfy the requirements under this final rule. Accordingly, States have latitude to impose requirements with respect to health insurance issuers that are more restrictive than the Federal law.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, CMS has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners (NAIC), participating in a NAIC workgroup on rate reviews and consulting with State insurance officials on an individual basis.

Throughout the process of developing this final rule, CMS has attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform protections to consumers in every State. By doing so, it is CMS' view that it has complied with the requirements of Executive Order 13132. Under the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, CMS certifies that the Center for Consumer Information and Insurance Oversight has complied with the requirements of Executive Order 13132 for the attached final rule in a meaningful and timely manner.

List of Subjects in 45 CFR Part 154

Administrative practice and procedure, Claims, Health care, Health insurance, Health plans, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR Subtitle A, Subchapter B, by amending part 154 as follows:

PART 154—HEALTH INSURANCE ISSUER RATE INCREASES: DISCLOSURE AND REVIEW REQUIREMENTS

■ 1. The authority citation for part 154 continues to read as follows:

Authority: Section 2794 of the Public Health Service Act (42 U.S.C. 300gg–94).

Subpart A—General Provisions

■ 2. In § 154.102, revise the definitions of ''individual market'' and ''small group market'' to read as follows:

§ 154.102 Definitions.

* * * * *

Individual market has the meaning given the term under the applicable State's rate filing laws, except that:

(1) Where State law does not define the term, it has the meaning given in section 2791(e)(1)(A) of the PHS Act; and

(2) Coverage that would be regulated as individual market coverage (as defined in section 2791(e)(1)(A)) if it were not sold through an association is subject to rate review as individual market coverage.

* * * * *

Small group market has the meaning given under the applicable State's rate filing laws, except that:

(1) Where State law does not define the term, it has the meaning given in section 2791(e)(5) of the PHS Act; provided, however, that for the purpose of this definition, ''50'' employees applies in place of ''100'' employees in

the definition of ''small employer'' under section 2791(e)(4); and

(2) Coverage that would be regulated as small group market coverage (as defined in section 2791(e)(5)) if it were not sold through an association is subject to rate review as small group market coverage.

* * * * *

Dated: August 16, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 29, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–22663 Filed 9–1–11; 11:15 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket 06–229; WT Docket 06–150; WP Docket 07–100; FCC 11–6]

Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rules; 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 requirements contained in the *Third Report and Order* in PS Docket 06–229, FCC 11–6. The information collection requirements were approved on August 18, 2011 by OMB.

DATES: The information collections contained in 47 CFR 90.1407(f), published at 76 FR 51271, August 18, 2011, are effective on September 6, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams on (202) 418–2918 or via e-mail to: *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on August 18, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 90.1407(f). The Commission publishes this document to announce the effective date of this rule section. See, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket 06–229; WT Docket 06–150; WP Docket 07–100; FCC 11–6, 76 FR 51271, August 18, 2011.

Synopsis

As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on August 18, 2011, for the information collection requirement contained in 47 CFR 90.1407(f). Under 5 CFR part 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 valid OMB Control Number.

The OMB Control Number is 3060–1152 and the total annual reporting burdens for respondents for this information collection are as follows:

Title: Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (Third Report and Order, PS Docket 06–229, FCC 11–6).

Form Number: Not applicable.

Type of Review: New collection.

OMB Control Number: 3060–1152.

OMB Approval Date: 08/18/2011.

OMB Expiration Date: 06/30/2014.

Respondents: Not-for-profit institutions; state, local and tribal governments.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 500 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: The *Third Report and Order* in PS Docket 06–229, adopted by the Commission on January 25, 2011 and released on January 26, 2011, codifies, as 47 CFR 90.1407(f), the requirement that public safety broadband network operators to certify to the Public Safety and Homeland Security Bureau before deployment that their networks will support required interfaces in compliance with Release 8 or higher of 3GPP standards prior to the date their networks achieve service availability. This certification requirement will enable the Bureau to ensure that public safety broadband networks support all of the interfaces necessary to achieve interoperability from day one of service operation.

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2011–22617 Filed 9–2–11; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 76, No. 172
Tuesday, September 6, 2011

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

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204, 205, and 245

[CIS No. 2474–09; DHS Docket No USCIS–2009–0004]

RIN 1615–AB81

Special Immigrant Juvenile Petitions

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to amend its regulations governing the Special Immigrant Juvenile (SIJ) classification, and related applications for adjustment of status to permanent resident. The Secretary may grant SIJ classification to aliens whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. This proposed rule would require a petitioner to be under the age of 21 only at the time of filing for SIJ classification. This proposed rule would require that juvenile court dependency be in effect at the time of filing for SIJ classification and continue through the time of adjudication, unless the age of the juvenile prevents such continued dependency. Aliens granted SIJ classification are eligible immediately to apply for adjustment of status to that of permanent resident.

DATES: Written comments must be submitted on or before November 7, 2011.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2009–0004 by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* You may submit comments directly to USCIS by e-mail at *USCISFRComment@dhs.gov.* Include DHS Docket No. USCIS–2009–0004 in the subject line of the message.
- *Mail:* Sunday Aigbe, Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2009–0004 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Sunday Aigbe, Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Rosemary Hartmann, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2099, telephone (202) 272–8350 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic, or federalism effects that might result from this proposed rule. Comments from individuals and agencies with direct experience handling SIJ cases are particularly encouraged. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2009–0004 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. *See* the **ADDRESSES** section above for information on how to submit comments. Those wishing to submit anonymous comments should do so electronically at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

II. Background and Legislative Authority

Section 101(a)(27)(J) of the Immigration and Nationality Act of 1952 (INA or Act), as amended, 8 U.S.C. 1101(a)(27)(J), permits the Secretary of Homeland Security to grant special immigrant juvenile classification to certain aliens whom a juvenile court has declared to be dependent on the court, or whom the juvenile court has committed to or placed under the custody of a State agency, department, individual, or entity. The juvenile court must determine that reunification of the alien with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under State law. In addition, it must be determined in administrative or judicial proceedings that the return of the alien to the alien's or the alien's parent's country of nationality or last habitual residence would not be in the alien's best interest.

This proposed rule would implement:

- The Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, 108 Stat. 4319 (Jan. 25, 1994),
- The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (CJS 1998 Appropriations Act),

Public Law 105–119, 111 Stat. 2440 (Nov. 26, 1997),

- The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006), and
- The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008).

The Immigration and Nationality Technical Corrections Act of 1994, the CJS 1998 Appropriations Act and TVPRA 2008 amended section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J), which permits certain juvenile aliens to petition for special immigrant juvenile classification, and section 245(h) of the Act, 8 U.S.C. 1255(h), which permits aliens classified as special immigrant juveniles to adjust status to permanent resident.

The Immigration and Nationality Technical Corrections Act of 1994 expanded the group of eligible aliens to include not only those dependent on a juvenile court, but those the court has legally committed to, or placed under the custody of, an agency or department of a State. The CJS 1998 Appropriations Act limited SIJ eligibility by requiring that dependency be due to abuse, abandonment, neglect, or a similar basis under State law. In addition, the consent functions were added in 1998. The scant legislative history behind these amendments suggests that Congress intended to limit eligibility to prevent potential abuse of this benefit, tying eligibility more directly to judicial findings of abuse, abandonment, or neglect and allowing the government to consent to the State court's jurisdiction and to the granting of an immigration benefit. *See* H.R. Rep. No. 105–405, at 130 (1997).

VAWA 2005 added section 287(h) to the INA, protecting a child applying for SIJ status from being compelled to contact the child's alleged abuser or any family members of the abuser. INA section 287(h), 8 U.S.C. 1357(h).

The TVRPA 2008 expanded eligibility for SIJ status in a number of ways. First, TVPRA 2008 replaced the requirement of eligibility for long-term foster care with a new requirement that a juvenile's reunification with one or both parents is not viable due to abuse, abandonment, neglect or a similar basis under State law. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). Second, TVPRA 2008 further expanded the group of eligible aliens to include those placed by a juvenile court with an individual or entity. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). In addition, Congress modified the consent requirements. DHS consent is simply consent to the grant of SIJ status and not consent to the dependency order serving as a precondition to the grant of SIJ status. INA section 101(a)(27)(J)(iii), 8 U.S.C. 1101(a)(27)(J)(iii). TVPRA 2008 vested the specific consent function with the Secretary of Health and Human Services. INA section 101(a)(27)(J)(iii)(I), 8 U.S.C. 1101(a)(27)(J)(iii)(I). TVPRA 2008 includes age out protection so that an alien cannot be denied SIJ classification based on age if the alien was under 21 years of age when the petition was filed. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6).

This proposed rule would clarify procedural and substantive requirements for SIJ petitions. The proposed rule also would implement statutorily mandated changes by revising the existing eligibility requirements, including protections against aging-out, adding the revised consent requirements, and further exempting SIJ adjustment of status applicants from several grounds of inadmissibility.

This rule proposes to require that an alien be under the age of 21 at the time of filing. The proposed rule would require that a juvenile be declared dependent on a juvenile court or have been legally committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court. TVPRA 2008 section 235(d)(1)(A). The proposed rule would require that such dependency, commitment, or custody, be in effect at the time of filing and continue through the time of adjudication, unless the age of the juvenile prevents such continuation. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6); *see* proposed 8 CFR 204.11(b)(1)(iv) and 8 CFR 205.1(a)(3)(iv)(B).

III. Special Immigrant Juvenile Classification and Related Adjustment of Status

A. Eligibility Requirements

An alien seeking classification as a special immigrant juvenile must file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360). DHS proposes to require that an alien is eligible for SIJ classification if he or she:

(1) Is present in the United States;

(2) Is under 21 years of age at the time of filing;

(3) Is unmarried;

(4) Has been declared dependent on a juvenile court, or has been legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court. Such dependency, commitment, or custody must be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation;

(5) Is the subject of a State or juvenile court determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law;

(6) Has been the subject of a determination in judicial or administrative proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(7) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile.

Based on the CJS 1998 Appropriations Act and TVPRA 2008, the proposed regulation would significantly change the Form I–360 eligibility criteria. *See* proposed 8 CFR 204.11(b) (currently 204.11(c)). DHS proposes to require the petitioner to be under the age of 21 at the time of filing as provided by TVPRA 2008. DHS also proposes to require that dependency, commitment, or custody per section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i), as amended by the TVPRA 2008, be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation.

1. Under 21 Years of Age

Under TVPRA 2008, USCIS may not deny SIJ classification based on age if the alien was a child on the date on which the alien petitioned for SIJ classification. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6). Under section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), a child is defined as under 21 years of age and unmarried. Through these provisions, Congress has expressed an intent that special immigrant juvenile classification requires that the alien be under the age of 21 only at the time of filing. *See* proposed 8 CFR 204.11(b)(1)(ii). The TVPRA 2008 prohibition would also require removal of existing 8 CFR 205.1(a)(3)(iv)(A), which provides for automatic revocation of the petition of an alien who reaches the age of 21 prior to adjudication of an application for adjustment of status. It would be contrary to the purpose of the statute for Congress to bar denial of a petition because the petitioner aged out, yet permit USCIS to continue to revoke the classification automatically if the alien's subsequent application for adjustment

of status has not been adjudicated before the alien's 21st birthday.

2. Unmarried

Under existing regulations, a juvenile must remain unmarried both at the time the Form I–360 is filed and through adjudication in order to qualify for SIJ classification. 8 CFR 204.11(c)(2) and 205.1(a)(3)(iv)(B). The proposed rule continues this approach, proposed 8 CFR 204.11(b)(1)(iii), for the following reasons. Marriage alters the dependent relationship with the juvenile court and emancipates the child. Furthermore, no derivative benefits for spouses are provided under the SIJ statute. This omission suggests that Congress did not intend for married juveniles to be eligible for SIJ classification. *See* 58 FR 42843–51 (1993). No legislative changes or intervening facts have caused USCIS to alter this provision. This interpretation, moreover, is consistent with Congress's use of the term ''child'' in its Transitional Rule provision of section 235(d)(6) of the TVPRA 2008.

The TVPRA 2008 age-out protection preserves eligibility for SIJ status by precluding USCIS from denying SIJ classification based on age if the alien was a child on the date on which the alien petitioned for SIJ classification. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6). This section of the TVPRA uses the term ''child,'' which is defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), as a person who is under 21 years of age and unmarried. Section 235(d)(6) of the TVPRA 2008 links the age-out prohibition specifically to age, by providing that SIJ status may not be denied ''based on age,'' but does not link the age-out protection to marital status. USCIS believes that Congress intended that SIJ classification require that the alien be under the age of 21 only at the time of filing, but that Congress did not intend a similar time-of-filing standard with respect to marital status. *See* proposed 8 CFR 204.11(b)(1)(iii).

3. Juvenile Court Dependency

An alien seeking SIJ classification must have been declared dependent on a juvenile court located in the United States, or such a court must have legally committed the juvenile to, or placed him or her under the custody of, a State agency or department of a State, or an individual or entity appointed by a State or juvenile court. The term ''juvenile court'' includes any court having jurisdiction to make judicial determinations about the custody and care of juveniles. The use of the term ''dependency'' throughout this proposed rule encompasses dependency, commitment, or custody as provided in amended section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i).

Dependency, commitment, or custody must be in effect when the Form I–360 is filed and must continue through the time of adjudication, unless the age of the petitioner prevents such continuation. *See* Proposed 8 CFR 204.11(b)(1)(iv). State juvenile court age limitations on jurisdiction and dates of ''emancipation'' vary greatly from state to state. Eligibility for special immigrant juvenile classification, however, depends only in part on the findings of the State court, since USCIS retains the discretionary authority to grant, deny, or revoke SIJ classification. The proposed rule would ensure that juveniles who age out of State court dependency after filing the Form I–360 would remain eligible for SIJ classification. USCIS, therefore, would not deny SIJ classification to a juvenile with a valid dependency order at the time of filing if the dependency order is no longer in effect at the time of adjudication as a result of the petitioner's age or emancipation, other than emancipation by marriage, based on State law.

Another context in which a petitioner may age out relates to relocation to another state. Jurisdiction over a juvenile by a state juvenile court typically ends upon the juvenile's relocation. For example, if an 18-year-old SIJ petitioner with a valid dependency order in one state relocates to another state, the petitioner might not be subject to the jurisdiction of the juvenile court in the new state because the new state deems age 18 to be the age of emancipation. Under the proposed rule, a juvenile who cannot obtain a new juvenile court dependency order because of age would remain eligible for SIJ classification so long as he or she meets all other applicable requirements. Proposed 8 CFR 204.11(b)(1)(iv) would not require dependency to continue through adjudication for petitioners in this situation.

When an SIJ petitioner relocates to another state, the initial juvenile court dependency order will no longer be in effect because the juvenile will no longer be under the initial court's jurisdiction. The petitioner must therefore obtain a new dependency order. Despite the lapse between dependency orders, USCIS will consider dependency to have continued through the time of adjudication under proposed 8 CFR 204.11(b)(1)(iv). USCIS recognizes that the calendaring of State court proceedings is beyond the petitioner's control and that a lapse between dependency orders based on relocation does not signify a change in the underlying facts on which special immigrant juvenile classification is based, but rather a technical transfer of jurisdiction that may be the cause of the lapse. USCIS, accordingly, will not consider a petitioner ineligible for SIJ classification due to a lapse in time between the two orders.

Proposed 8 CFR 204.11(b)(2)(i) clarifies that a juvenile who is adopted or placed under guardianship is eligible for SIJ classification under amended section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i). This section allows eligibility where a petitioner has been ''legally committed to, or placed under the custody of * * * an individual * * * appointed by a State or juvenile court located in the United States.'' Therefore, commitment to, or placement under the custody of an individual, can include adoption and guardianship.

4. Viability of Reunification Due To Abuse, Neglect, Abandonment, or a Similar Basis Under State Law

An SIJ petitioner must additionally establish that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. Section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i). The proposed rule would require the juvenile to establish that he or she is the subject of a State court order determining that reunification with one or both parents is not viable for one of the reasons enumerated in section 101(a)(27)(J)(i). Determining the viability of reunification with one or both of a child's parents due to abuse, neglect, abandonment, or a similar basis under State law is a question that lies within the expertise of the juvenile court, applying relevant State law. *See* Proposed 8 CFR 204.11(b)(1)(v). Section 101(a)(27)(J)(i) of the Act previously required a State court determination of eligibility for long-term foster care due to abuse, neglect, or abandonment.

The concepts of abuse, neglect, and abandonment are not defined in immigration law. Specific legal definitions of the terms ''abuse, neglect, or abandonment'' for the purposes of juvenile dependency proceedings derive from State law and therefore vary from state to state.

For example, in California, ''abuse'' encompasses distinct definitions of physical abuse, neglect (including severe and general neglect), sexual abuse, and emotional abuse. The basic definition of child abuse or neglect includes physical injury inflicted by other than accidental means upon a child by another person; willful

harming or injury of the child or the endangering of the person or health of the child; and unlawful corporal punishment or injury. Cal. Penal Code sections 11165.3, 11165.6. In the District of Columbia, however, ''physical child abuse'' refers to infliction of physical or mental injury upon the child and sexual abuse or exploitation of a child. The law also specifies which acts are considered abusive and, therefore, do not constitute mere ''discipline.'' DC Code Ann. section 16–2301.

In New York, a child is deemed ''abandoned'' if a parent shows ''an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency.'' NY Soc. Serv. Law section 384–b. Virginia law, by contrast, simply states, ''*Abused or neglected child* means any child less than age 18 whose parents or other person responsible for his or her care abandons such child.'' VA Code Ann. section 63.2–100. Thus, the language of the dependency orders varies based on individual State laws as well.

If a juvenile court order includes a finding that reunification with one or both parents is not viable under State law, the petitioner must establish that this State law basis is similar to a finding of abuse, neglect, or abandonment. The petitioner has the burden of proof relating to the scope of the State law. The nature and elements of the State law must be similar to the nature and elements of abuse, abandonment, or neglect. This is a case-by-case determination because of the variations in State law.

For example, under Connecticut law, a child may be found ''uncared for'' if the child is ''homeless'' or if his or her ''home cannot provide the specialized care that the physical, emotional or mental condition of the child requires.'' *See* Conn. Gen. Stat. Ann. section 46b–120(9). ''Uncared for'' may be similar to abuse, abandonment, or neglect because children found ''uncared for'' are equally entitled to juvenile court intervention and protection. The outcomes for children adjudged ''uncared for'' are the same as they are for children adjudged abused, abandoned, or neglected. *See* Conn. Gen. Stat. Ann. section 46b–120(8),(9); 121(a).

Petitioners are encouraged to include copies of the State laws on abuse, abandonment, and neglect, or equivalent concepts as defined in the State, and the State definition for the basis on which the juvenile court has made its finding in order to more clearly meet their burden of proof. Additional evidence to establish the basis for a finding that reunification is not viable due to a similar basis found under State law may include:

- Evidence that shows the conduct that occurred and any acts that led to the victimization of the petitioner (this may be contained in the court order itself);
- Other findings from the court;
- Evidence of how a child subject to a finding under State law is treated similarly by the State, for example is eligible for the same programs, as a child who has been adjudicated abused, abandoned or neglected;
- Opinions or letters from social workers, victim advocates, medical professionals, and others who work with the juvenile; and
- Affidavits of the petitioner, other witnesses or those who know the juvenile.

5. Determination of ''Best Interest''

The State judicial or administrative proceedings must additionally determine, under applicable State law, that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the alien or of his or her parents. Congress has not altered these requirements, and this proposed rule would continue the existing requirement. Typically, the juvenile court order itself will include this finding. This finding, however, can be made in any State judicial or administrative proceeding. *See* current 8 CFR 204.11(c)(6) and proposed 8 CFR 204.11(b)(1)(vi).

B. Consent Requirements

1. DHS Consent to the Grant of SIJ Classification

All petitioners for SIJ classification must obtain the consent of the Secretary of Homeland Security to the SIJ classification. Section 101(a)(27)(J)(iii) of the Act, 8 U.S.C. 1101(a)(27)(J)(iii), as amended; *see* proposed 8 CFR 204.11(c)(1). Consent to the dependency order was historically a precondition to granting special immigrant juvenile classification. Section 235(d)(1)(B) of TVPRA 2008, however, replaced that precondition with the requirement that the Secretary consent to the SIJ classification itself. This proposed rule provides that consent will be granted to otherwise eligible SIJ petitioners where the qualifying State court order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment, or some similar basis under State law, and not primarily for the purpose of obtaining lawful immigration status. *See* proposed 8 CFR 204.11(c)(1)(i). This policy is consistent with congressional intent in creating the consent function. *See* H.R. Rep. No. 105–405, at 130 (1997) (noting that the language of the statute was modified to limit the SIJ provisions to those for whom it was created by requiring a determination that neither the dependency order nor the judicial determination of best interest was sought primarily to obtain an immigration benefit, rather than relief from abuse, abandonment or neglect). The proposed rule clarifies that the approval of a Form I–360 is evidence of the Secretary's consent, rather than consent being a precondition of the juvenile court order. *See* proposed 8 CFR 204.11(c)(1)(iii). The removal of consent to the juvenile court order as a statutory precondition renders two separate decisions by USCIS unnecessary and redundant.

The petitioner bears the burden of proving that the State court order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment, or some similar basis under State law. Evidence can include information about the juvenile court proceedings such as a dependency or guardianship order, findings accompanying the order, actual records from the proceedings, or other evidence that summarizes the evidence presented to the court. Dependency orders that include or are supplemented by specific findings of fact regarding the basis for a finding of abuse, neglect, abandonment, or some similar basis under State law are usually sufficient to provide a basis for the Secretary's consent. Orders lacking specific factual findings generally are not sufficient to provide a basis for consent, and must be supplemented by separate findings or any other relevant evidence establishing the factual basis for the order.

Evidence can also include information from persons who know the petitioner in a personal or professional manner. This evidence could include, but is not limited to, affidavits, letters, evaluations, or treatment plans from the court, State agency, department, or individual with whom the juvenile has been placed, health care professionals, social workers, others with responsibility to evaluate and treat the juvenile, attorneys, guardians, adoptive parents, family members, and friends.

USCIS may seek or consider additional relevant evidence if the evidence presented is not sufficient to establish a reasonable basis for consent. USCIS may request additional evidence

from the petitioner in such cases. Moreover, USCIS may consider any evidence of the role of a parent or other custodian in arranging for a petitioner to travel to the United States or to petition for SIJ classification. *See Yeboah* v. *U.S. Dep't of Justice,* 345 F.3d 216 (3d Cir. 2003). If USCIS determines that the State court order is sought primarily to obtain lawful immigration status, USCIS will deny consent.

2. Specific Consent of HHS

TVPRA 2008 vested custody of unaccompanied alien children, who are often petitioners for SIJ classification, with the Secretary of Health and Human Services rather than the Secretary of Homeland Security. In addition, TVPRA 2008 simplified the language to refer simply to ''custody,'' in contrast to the previous ''actual or constructive custody'' language.

No juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction. Section 101(a)(27)(J)(iii)(I) of the Act, 8 U.S.C. 1101(a)(27)(J)(iii)(I). A juvenile in the custody of the Department of Health and Human Services (HHS) is required to obtain specific consent from HHS to a State court order modifying custody status or placement prior to filing a petition for SIJ classification. *See* proposed 8 CFR 204.11(c)(2). The specific consent requirement was introduced by the 1998 Appropriations Act and amended by TVPRA 2008.

An SIJ petitioner who is in the custody of HHS must now seek specific consent from HHS if he or she seeks a juvenile court order that would determine or alter his or her custody status or placement. The SIJ petitioner is not required to obtain specific consent from HHS if the juvenile court order makes no findings as to custody status or placement. Where required, an SIJ petitioner must submit evidence of an HHS grant of specific consent when filing a petition for SIJ classification with USCIS.

C. Application Process

An alien must file Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, to petition for SIJ classification under section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J). All petitioners for SIJ classification must submit all required initial evidence, and supporting documentation, with the Form I–360. *See* 8 CFR 103.2(b)(1) and proposed 8 CFR 204.11(d).

This proposed rule would amend what constitutes acceptable supporting documentation or initial evidence that must accompany the Form I–360. *See* proposed 8 CFR 204.11(d). The proposed rule would require the following initial evidence, which may be contained in one document or in several documents:

- Form I–360, completed in accordance with the instructions on the form;
- Evidence of the alien's age, such as a birth certificate, passport, official foreign identity document issued by a foreign government, or other document which, in the discretion of USCIS, establishes the alien's age;
- Biometrics as provided in the instructions on the form;
- A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the juvenile to be dependent upon that court or that the court has legally committed the juvenile to, or placed the juvenile under the custody of, an agency or department of a State or an individual or entity appointed by a State or juvenile court;
- Specific findings of fact or other relevant evidence, either incorporated into the court order or separate from the order, establishing that reunification with one or both parents was deemed not viable due to abuse, neglect, abandonment, or a similar basis under State law. If the evidence includes a finding that reunification is not viable due to a similar basis under State law, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment;
- Evidence of a determination made in judicial or administrative proceedings, under applicable State law, that it would not be in the juvenile's best interest to be returned to the country of nationality or last habitual residence of the juvenile or of his or her parent(s); and
- If a juvenile is in HHS custody and obtained a juvenile court order that determined or altered his or her custody status or placement, evidence that HHS granted specific consent to the new custody status or placement ordered by the court.

USCIS may obtain initial or additional supporting evidence, documents, or materials directly from a court, government agency, or other administrative body in either paper or electronic format.

The Application to Register Permanent Residence or Adjust Status, Form I–485, is used by SIJ petitioners to apply for related adjustment of status to that of a permanent resident, either concurrently with or subsequent to filing Form I–360. Where possible, USCIS encourages concurrent filing of Form I–485 and Form I–360.

D. Adjudication and Post-Adjudication

1. Interview Process

USCIS may interview the petitioner for purposes of adjudicating the Form I–360 petition. 8 CFR 103.2(b)(9). USCIS has discretion to determine whether an interview is necessary. The determination not to interview may apply when an SIJ petitioner files Form I–360 alone, without an accompanying Form I–485. *See* proposed 8 CFR 204.11(e). USCIS will consider such factors as the age of the juvenile, the sensitive nature of issues of abuse, neglect, or abandonment involved in the case, and whether the USCIS officer expects to gather additional relevant evidence at an interview. In some instances, an officer may require information that can only be provided by the juvenile or a person acting on the juvenile's behalf, such as when a petition is missing information or the juvenile has a criminal record.

USCIS seeks to establish a nonthreatening interview environment that would promote an open, productive discussion about the SIJ petition. Juveniles seeking SIJ classification, unlike other juveniles, are under specific pressures and hardships relating to the loss of parental support and to juvenile court proceedings. The juvenile could bring a trusted adult (who is familiar with the juvenile and can be supportive), in addition to an attorney or representative (at no expense to the Government). The trusted adult or the attorney may present a statement at the end of the interview. The interviewing officer may, in his or her discretion, limit the length of such statement or comment and may require its submission in writing. USCIS still maintains discretion to interview a child separately when necessary. Generally, in the context of the SIJ interview, it is not necessary to interview a juvenile (whether alone or accompanied) about the facts regarding the abuse, neglect, or abandonment upon which the dependency order is based. However, USCIS retains the discretion to interview the juvenile.

USCIS cannot compel an SIJ petitioner to contact the alleged abuser or family members of the alleged abuser at any point during the petition or interview process. INA section 287(h), 8 U.S.C. 1357(h), proposed 8 CFR 204.11(f).

As a general rule, USCIS must interview any applicant for adjustment of status, regardless of the underlying status and how the applicant is adjusting status to lawful permanent resident. 8 CFR 245.6. This general interview requirement for all adjustment of status applications also applies to SIJ petitioners. It applies when, as is most often the case, an SIJ petitioner files the Form I–360 concurrently with the Form I–485. It also applies when USCIS grants a Form I–360 filed separately, and then the SIJ petitioner files a Form I–485.

Although the general interview requirement does apply to SIJ petitioners, USCIS does have discretion to waive an adjustment of status interview for SIJ petitioners. USCIS may waive an interview in the case of a child under the age of 14, or where USCIS determines on a case-by-case basis that an interview is not necessary. *See* 8 CFR 245.6. USCIS will review the underlying Form I–360 (if not already approved) and the Form I–485 during the interview and will generally provide safeguards outlined above regarding interviews for SIJ classification.

2. Decisions

TVPRA 2008 contained a provision for expeditious adjudication of SIJ petitions within 180 days. *See* TVPRA 2008 section 235(d)(2), 8 U.S.C. 1232(d)(2). USCIS intends to adhere to the 180-day benchmark, taking into account general USCIS regulations pertaining to receipting of petitions, evidence and processing, and assuming the completeness of the petition and supporting evidence. Proposed 8 CFR 204.11(h); 8 CFR 103.2. The 180-day timeframe begins when the SIJ petition is receipted, as reflected in the receipt notice sent to the SIJ petitioner. 8 CFR 103.2(a)(7). If USCIS sends a request for initial evidence, the 180-day timeframe will start over from the date of receipt of the required initial evidence. 8 CFR 103.2(b)(10)(i). If USCIS sends a request for additional evidence, the 180-day timeframe will stop as of the date USCIS sends the request, and will resume once USCIS receives a response from the SIJ petitioner. 8 CFR 103.2(b)(10)(i). USCIS will not count delay attributable to the petitioner or his or her representative within the 180-day timeframe. USCIS interprets the 180-day timeframe to apply to adjudication of the Form I–360 petition for SIJ status only, and not to the Form I–485 application for adjustment of status. USCIS does not interpret the 180-day timeframe to mean that an unadjudicated petition at the end of the timeframe will be automatically approved.

3. Revocation

Current 8 CFR 205.1(a)(3)(iv) provides conditions under which a grant of an underlying petition for SIJ classifica tion is automatically revoked during the period when a Form I–485 is pending, but before a decision on the Form I–485 becomes final. This proposed rule would alter this section consistent with TVPRA 2008.

As noted above, USCIS cannot deny SIJ classification based on age if the alien was a child on the date on which the alien filed the petition. Current regulations, however, provide for automatic revocation of the underlying SIJ petition if the juvenile reaches the age of 21 or dependency on the juvenile court was terminated before the Form I–485 was adjudicated. 8 CFR 205.1(a)(3)(iv)(A) and (C). As discussed above, it would be contrary to the language and purpose of the amended statute to continue this automatic revocation. Accordingly, the proposed rule removes 8 CFR 205.1(a)(3)(iv)(A) and (C) because these grounds relate to a juvenile's age.

The rule also proposes to modify the language at current 8 CFR 205.1(a)(3)(iv)(D) to reflect current statutory language at section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i), requiring automatic revocation of an approval of the Form I–360 if a court deems reunification with one or both parents a viable option. The proposed rule would not change the language of current 8 CFR 205.1(a)(3)(iv)(B) (revoking approval of the petition upon the marriage of the juvenile). As discussed above, Congress intended an SIJ petitioner to remain unmarried.

4. No Parental Rights

The proposed rule references the statutory language at section 101(a)(27)(J)(iii)(II) of the Act that parents cannot be accorded any right, privilege, or status under the Act. Proposed 8 CFR 204.11(g). USCIS interprets this provision to mean that any parent or prior adoptive parent cannot gain lawful status through the alien granted SIJ status, regardless of whether the alien goes on to become a permanent resident or even a United States citizen. When TVPRA 2008 added the language regarding the non-viability of reunification with one or both parents, Congress did not amend section 101(a)(27)(J)(iii)(II) of the INA to permit a non-abusive parent to gain any right, privilege, or status under the INA by virtue of the parental relationship. USCIS continues to interpret this language to apply to any parent or any prior adoptive parent, regardless of that parent's involvement in the abuse, abandonment or neglect.

E. Adjustment of Status

As provided by the TVPRA 2008 amendments to section 245(h)(2)(A) of the Act, 8 U.S.C. 1255(h)(2)(A), SIJ adjustment of status applicants are exempt from four additional grounds of inadmissibility. The full list of exempted grounds of inadmissibility in proposed 8 CFR 245.1(e)(3) would be modified to include:

- Public charge (section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4));
- Labor certification (section 212(a)(5)(A) of the Act, 8 U.S.C. 1182(a)(5)(A));
- Aliens present without inspection (section 212(a)(6)(A) of the Act, 8 U.S.C. 1182(a)(6)(A));
- Misrepresentation (section 212(a)(6)(C) of the Act, 8 U.S.C. 1182(a)(6)(C));
- Stowaways (section 212(a)(6)(D) of the Act, 8 U.S.C. 1182(a)(6)(D));
- Documentation requirements (section 212(a)(7)(A) of the Act, 8 U.S.C. 1182(a)(7)(A)); and
- Aliens unlawfully present (section 212(a)(9)(B) of the Act, 8 U.S.C. 1182(a)(9)(B)).

The following grounds of inadmissibility cannot be waived:

- Conviction of certain crimes (section 212(a)(2)(A) of the Act, 8 U.S.C. 1182(a)(2)(A));
- Multiple criminal convictions (section 212(a)(2)(B) of the Act, 8 U.S.C. 1182(a)(2)(B));
- Controlled substance traffickers (section 212(a)(2)(C) of the Act, 8 U.S.C. 1182(a)(2)(C)) except for a single offense of simple possession of 30 grams or less of marijuana;
- Security and related grounds (section 212(a)(3)(A) of the Act, 8 U.S.C. 1182(a)(3)(A));
- Terrorist activities (section 212(a)(3)(B) of the Act, 8 U.S.C. 1182(a)(3)(B));
- Foreign policy (section 212(a)(3)(C) of the Act, 8 U.S.C. 1182(a)(3)(C)); and
- Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (section 212(a)(3)(E) of the Act, 8 U.S.C. 1182(a)(3)(E)).

Under section 245(h)(2)(B) of the Act, 8 U.S.C. 1255(h)(2)(B), any other inadmissibility provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest. The proposed rule amends 8 CFR 245.1(e)(3) accordingly.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

DHS has reviewed this proposed rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals, who are not small entities as defined by 5 U.S.C. 601(6). There are no costs added by this rule and no change in any process as a result of this proposed rule that would have a direct effect, either positive or negative, on a small entity.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. An analysis of the costs and benefits of this rule has been prepared and submitted to OMB for review as required by the Executive Order. The results of that analysis are as follows.

This rule proposes several changes to the SIJ program that are necessary to bring the regulations into conformity with statutory requirements and agency practice. No additional regulatory compliance requirements will be added that will cause a detectable change in costs for petitioning individuals. In addition, this rule is expected to result in no changes in program costs for the government. Qualitatively, this proposed rule would codify the practices and procedures currently implemented via internal policy directives issued by USCIS. This rule would establish clear guidance for petitioners and applicants regarding the procedural and interpretative issues raised following statutory amendments.

In fiscal year 2009, USCIS received 1,484 SIJ petitions; in 2008 USCIS received 1,361 petitions; in 2007 USCIS received 739 petitions; and in 2006 USCIS received 541 petitions. In fiscal year 2009, USCIS approved 1,212 SIJ petitions; in 2008 USCIS approved 697 petitions; in 2007 USCIS approved 521 petitions; and in 2006 USCIS approved 389 petitions. It does not follow that USCIS denied the remainder of petitions filed in each fiscal year. These approval numbers do not take into account cases that, by the end of the fiscal year, were only initially receipted, awaiting response on a Request for Further Evidence, still pending, transferred, or rejected. The approval numbers may also include petitions filed in a previous fiscal year. According to the DHS Office of Immigration Statistics, in fiscal year 2008, 989 SIJs adjusted status to permanent resident; in fiscal year 2007 772 SIJs adjusted status to permanent resident; and in fiscal year 2006, 894 SIJs adjusted status to permanent resident. The volume of petitions for SIJ classification is not expected to change significantly as a result of this proposed rule if finally promulgated and, therefore, the burden of compliance both in time and fees will not increase above that currently imposed.

USCIS funds the cost of processing applications and petitions for immigration and naturalization benefits and services, and USCIS' associated operating costs, by charging and collecting fees. USCIS has determined, under its discretionary fee setting authority, however, that no fee should be charged for filing Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, filed by petitioners seeking SIJ classification. *See* 8 CFR 103.7(b)(1). These petitioners are subject to dependency orders of a State court and are not able to pay the filing fee for adjudication of the special immigrant juvenile petition. USCIS believes that these limited numbers of juvenile petitioners should be exempt from fees in the same manner as asylees under INA section 286(m), 8 U.S.C. 1356(m).

Most petitioners seeking SIJ classification will also file a Form I–485, Application to Register Permanent Residence or Adjust Status, with a current $985 fee, and Form I–601, Application for Waiver of Ground of Inadmissibility, with a current $585 fee. SIJ petitioners who cannot afford the fees for Forms I–485 or I–601 may request a waiver of the fees. The respective fees are not affected by this rule.

The fee impacts of this rule on each SIJ petitioner as well as on USCIS are neutral because USCIS estimates that filings for SIJ classification will continue at about the same volume as they have in the relatively recent past.

E. Executive Order 13132 (Federalism)

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, USCIS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Family Assessment

This regulation may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. This action has been assessed in accordance with the criteria specified by section 654(c)(1). This regulation will enhance family well-being by enabling juvenile aliens who have been abused, neglected, or abandoned and placed in State custody by a juvenile court to obtain special immigrant classification. Such classification will enable these juveniles to be placed into more stable, permanent home environments and release them from reliance on their

abusers. Statutory mandate prevents the granting of immigration benefits to the abusive parent of an SIJ. 8 U.S.C. 1101(a)(27)(J)(iii)(II). This classification will also encourage reporting of abuse to the authorities for appropriate legal action.

H. Paperwork Reduction Act (PRA)

On June 25, 2009, USCIS published a 60-day notice in the **Federal Register** requesting comments on the revised Form I–360 that included the SIJ provisions required by Public Law 105–119, Public Law 109–162, and Public Law 110–457. 74 FR 30312. The one comment that USCIS received on the revised form did not relate to the SIJ provisions but rather was a suggestion to break up the Form I–360 into separate forms for SIJ and religious workers. USCIS responded to the commenter directly, advising him that creating a new form solely for religious workers and SIJs would require modification to the established electronic systems that would be extremely cumbersome and costly at this time. On September 8, 2009, USCIS published a 30-day notice in the **Federal Register** requesting further comments on the revised form. USCIS did not receive any further comments. 74 FR 46216.

On December 30, 2009, the Office of Management and Budget approved the revised Form I–360 in accordance with the PRA. The approved OMB Control No. is 1615–0020.

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1232, 1255; 8 CFR Part 2.

2. Section 204.11 is revised to read as follows:

§ 204.11 Special immigrant classification for certain aliens declared dependent on a juvenile court (Special Immigrant Juvenile).

(a) *Definitions.* As used in this section, the terms:

Juvenile court means any court located in the United States having jurisdiction to make judicial determinations about the custody and care of juveniles.

Petition means Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, or a successor form as may be prescribed by DHS.

State includes an Indian tribe, tribal organization, or tribal consortium, operating a program under a plan approved under 42 U.S.C. 671.

(b) *Eligibility.* (1) An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if he or she:

(i) Is physically present in the United States;

(ii) Is under 21 years of age at the time of filing;

(iii) Is unmarried;

(iv) Has been declared dependent on a juvenile court or has been legally committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court. Such dependency, commitment, or custody must be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation.

(v) Is the subject of a State or juvenile court determination, under applicable State law, that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law;

(vi) Has been the subject of judicial proceedings or administrative proceedings in which it has been determined, under applicable State law, that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the alien or his or her parent(s); and

(vii) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile.

(2) For the purposes of establishing classification as a special immigrant juvenile, a juvenile who has been adopted or placed under guardianship after having been found dependent upon a juvenile court in the United States, or having been committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court, is considered eligible for SIJ classification. Commitment to or placement under the custody of an individual can include adoption and guardianship.

(c) *Consent.* (1) Every alien must obtain the consent of the Secretary of Homeland Security to the classification as a special immigrant juvenile.

(i) In determining whether to provide consent to classification as a special immigrant juvenile as a matter of discretion, USCIS will consider, among other permissible discretionary factors, whether the alien has established, based on the evidence of record, that the State court order was sought primarily to obtain relief from abuse, neglect, abandonment, or a similar basis under State law and not primarily for the purpose of obtaining lawful immigration status; and that the evidence otherwise demonstrates that there is a bona fide basis for granting special immigrant juvenile status.

(ii) The alien has the burden of proof to show that discretion should be exercised in his or her favor.

(iii) Approval by USCIS of the SIJ petition also will constitute the granting of consent on behalf of the Secretary.

(2) An alien in the custody of the Department of Health and Human Services, who seeks a juvenile court order determining or altering the alien's custody status or placement, must obtain specific consent from the Secretary of Health and Human Services to the State court's jurisdiction to determine or alter custody status prior to filing the SIJ petition with USCIS.

(d) *Petition procedures.* The alien, or an adult acting on the alien's behalf, may file the petition for special immigrant juvenile classification. Each individual requesting special immigrant juvenile classification must submit:

(1) A Petition completed in accordance with the instructions on the form;

(2) Evidence of the alien's age; and

(3) One or more documents which reflect the following:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the juvenile to be dependent upon that court, or that the court legally committed the juvenile to, or placed the juvenile under the custody of, a State agency or department, or an individual or entity appointed by a State or juvenile court;

(ii) Specific findings of fact or other relevant evidence, either incorporated into the court order or separate from the order, establishing the basis for a finding that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; and

(iii) Evidence of a determination made in judicial or administrative proceedings, under applicable State law, that it would not be in the juvenile's best interest to be returned to the country of nationality or last habitual residence of the juvenile or of his or her parent(s).

(4) If a juvenile is in the custody of the Secretary of Health and Human Services and obtained a juvenile court order that determined or altered the custody status or placement of the juvenile, evidence that the Secretary of Health and Human Services granted specific consent.

(e) *Interview.* In accordance with 8 CFR 103.2(b) and 245.6, although an interview is not a prerequisite to the adjudication of a Special Immigrant Juvenile petition, USCIS may require an interview as a matter of discretion.

(1) The SIJ petitioner may be accompanied by a trusted adult, in addition to an attorney or representative, at the interview. USCIS, in its discretion, may place reasonable limits on the number of persons who may be present at the interview.

(2) The trusted adult or attorney or representative may present a statement at the end of the interview. USCIS, in its discretion, may limit the length of such statement or comment and may require its submission in writing.

(f) *No contact.* USCIS will not compel an SIJ petitioner to contact the alleged abuser or family members of the alleged abuser at any time during the petition or interview process.

(g) *No parental rights.* No natural or prior adoptive parent of any alien with an approved Special Immigrant Juvenile petition shall, by virtue of such parentage, be accorded any right, privilege, or status under the Act. This prohibition remains in effect even after the alien becomes a lawful permanent resident or a United States citizen.

(h) *Timeframe.* USCIS will adjudicate a petition for Special Immigrant Juvenile classification within 180 days of receipt of a properly filed petition. The date of receipt will be as provided in 8 CFR 103.2(a)(7). A request for required initial evidence from USCIS to the petitioner or a request from the petitioner for rescheduling of biometrics or an interview will restart the 180-day timeframe. Any request for additional evidence will suspend the timeframe as of the date of the request up until the date the requested evidence, response, or a request for a decision based on the evidence already provided is received. Any delay requested or caused by the applicant will not be counted as part of the 180-day adjudication period.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

3. The authority citation for part 205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

4. Section 205.1 is amended by:

a. Removing paragraph (a)(3)(iv)(A);

b. Removing paragraph (a)(3)(iv)(C);

c. Redesignating paragraphs (a)(3)(iv)(B), (D) and (E) as paragraphs (a)(3)(iv)(A), (B) and (C) respectively; and by

d. Revising newly redesignated paragraph (a)(3)(iv)(B).

The revision reads as follows:

§ 205.1 Automatic revocation.

(a) * * *

(3) * * *

(iv) * * *

(B) Upon reunification of the beneficiary with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, or abandonment; or

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

5. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229; 8 CFR part 2.

6. Section 245.1 is amended by revising paragraph (e)(3) to read as follows:

§ 245.1 Eligibility.

* * * * *

(e) * * *

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) of the Act nor the inadmissibility provisions of sections 212(a)(4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), or (9)(B) of the Act shall apply to any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act. The inadmissibility provisions of sections 212(a)(2)(A), (2)(B), (2)(C) (except for a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), or (3)(E) of the Act may not be waived. Any other inadmissibility provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest. The relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination based on family unity.

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2011–22625 Filed 9–2–11; 8:45 am]

BILLING CODE 9111–97–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2011–0209]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed enforcement policy revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is soliciting comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (*i.e.*, reactor, fuel cycle, and materials licensees, vendors, and contractors), on several topics addressed in this document to assist the NRC in revising its Enforcement Policy. The NRC staff is currently evaluating these topics for inclusion in the next revision to the NRC Enforcement Policy. The proposed Policy topics discussed in this document will not address all the items in SRM–SECY–09–0190, ''Major Revision to NRC Enforcement Policy,'' dated August 27, 2010 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML102390327). Before the staff submits the next proposed Policy revision to the Commission for approval in early Calendar Year 2012, it will publish a second document in the **Federal Register** to solicit public comments on additional topics.

DATES: Submit comments by October 6, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0209 in the subject line of

your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0209. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–3456, e-mail: *Doug.Starkey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this action using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *ADAMS:* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Enforcement Policy is accessible under ADAMS Accession No. ML093480037.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed enforcement policy revision can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0209.

The NRC maintains the Enforcement Policy on its Web site at *http://www.nrc.gov;* under ''Spotlight,'' select ''Enforcement Actions,'' and then select ''Policy'' under ''Issued Significant Enforcement Actions.''

II. Background

On August 27, 2010, in SRM–SECY–09–0190, the Commission approved a major revision to its Enforcement Policy. On September 30, 2010, the NRC published a notice (75 FR 60485) to announce an effective date of September 30, 2010, for that revision to the Policy. In SRM–SECY–09–0190, the Commission also directed the NRC staff to evaluate certain topics for inclusion in the next revision to the Policy. In addition to those Commission-identified topics, the staff is evaluating other topics that it may present to the Commission for approval and inclusion in the next Policy revision. The background on topics that the staff is evaluating and the corresponding proposed wording for inclusion in the next Enforcement Policy revision follows in Sections 1–5. As previously stated, the staff will, at a future date, solicit public comments on additional topics for the next proposed Policy revision.

1. Guidance for the Use of Daily Civil Penalties

Daily civil penalties are an enforcement action that is available to the NRC under Section 234 of the Atomic Energy Act of 1954, as amended (AEA), and Title 10 of the *Code of Federal Regulations* (10 CFR) 2.205(j). Historically, the NRC has rarely issued daily civil penalties for violations of its requirements. In certain cases, the agency did issue such penalties because it needed to send a strong regulatory message for continuing significant violations.

The Enforcement Policy currently provides limited guidance on the use of daily civil penalties. Section 2.3.4 of the Enforcement Policy, ''Civil Penalty,'' currently addresses the use of daily civil penalties as follows:

> The NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues. The NRC may exercise this discretion when a licensee was aware of a violation, or if the licensee had a clear opportunity to identify and correct the violation but failed to do so.

In SRM–SECY–09–0190, the Commission directed the NRC staff to include additional guidance, such as criteria and examples, in the next proposed revision to the Enforcement Policy to help determine when daily civil penalties are appropriate. The intent of this proposed Policy revision is to provide factors for the staff to consider when evaluating the appropriateness of daily civil penalties for continuing violations of at least moderate significance.

The staff proposes to replace the existing paragraph in Section 2.3.4 of the current Policy with the following three paragraphs:

> The NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues (*i.e.,* daily civil penalties). The NRC may exercise this discretion when a licensee was aware of a violation of at least moderate significance and had a clear opportunity to prevent, identify, and correct the violation but failed to do so.
>
> In evaluating whether daily civil penalties are appropriate, the NRC will consider such factors as whether the violation resulted in actual consequences to public health and safety or to the common defense and security, the safety significance of the violation, whether the violation was repetitive because of inadequate corrective actions, the degree of management culpability in allowing the violation to continue or in not precluding it, the responsiveness of the licensee once the violation and its significance were identified and understood, whether the continuing violation was deliberate, and the duration of the violation. These evaluation factors are not necessarily of equal significance; therefore, for each case, the NRC will weigh the relative importance of each contributing factor, as well as any extenuating circumstances, to determine whether it is appropriate to use daily civil penalties.
>
> When the NRC determines that the use of daily civil penalties is appropriate as part of an enforcement action, the agency will assess a base civil penalty for the first day of the violation in accordance with the civil penalty assessment process discussed in this section and Section 8.0, ''Table of Base Civil

Penalties,'' of the Policy. Then, to determine the total civil penalty for the continuing violation, the NRC will supplement the base civil penalty determination with a daily civil penalty for some or all the days the violation continues. The NRC will determine the amount of the daily civil penalty on a case-by-case basis after considering the factors noted in the preceding paragraph and any relevant past precedent for similar violations. The daily civil penalty may be less than the maximum statutory daily limit in effect at the time of the violation.

2. Credit for Fuel Cycle Licensee Corrective Action Program

All licensees, including fuel cycle licensees, are eligible to receive credit for prompt and comprehensive corrective actions taken in response to issues that warrant escalated enforcement actions (*i.e.,* Severity Level (SL) I, II, and III violations and violations associated with red, yellow, and white significance determination process findings with actual consequences) as part of the NRC's civil penalty assessment process, as discussed in Section 2.3.4 of the Enforcement Policy. Corrective action credit under Section 2.3.4 is applicable to all licensees regardless of whether a licensee has a corrective action program (CAP). As stated in Section 2.3.4.c of the Policy, the purpose of this corrective action factor in the civil penalty assessment process is to encourage licensees (1) to take the immediate actions necessary upon discovery of a violation that will restore safety, security, and compliance with the license, regulation(s), or other requirement(s) and (2) to develop and implement (in a timely manner) the lasting actions that not only will prevent recurrence of the violation at issue but also will be appropriately comprehensive, given the significance and complexity of the violation, to prevent the occurrence of violations with similar root causes.

In response to the Commission's direction in SRM–SECY–09–0190, the staff proposes revisions to the Enforcement Policy to provide fuel cycle licensees with credit for a CAP for certain SL IV violations. Presently, this corrective action program credit for certain SL IV violations is only available to power reactor licensees. This revision would allow fuel cycle licensees with credit for a CAP to have NRC-identified SL IV violations treated as non-cited violations (NCVs) if certain other criteria are met.

Section 2.3.2, ''Non-Cited Violation,'' of the current Enforcement Policy provides criteria that all NRC licensees must meet before the agency can disposition a SL IV violation as a NCV. These criteria, in part, state the following:

- The violation was corrected or committed to be corrected within a reasonable period of time (commensurate with the significance of the violation).
- The violation was not repetitive as a result of inadequate corrective action. (This does not apply to violations associated with green Reactor Oversight Process findings).
- The violation was not willful. Notwithstanding willfulness, a NCV may still be appropriate in certain specified circumstances.

In addition to the above criteria, Section 2.3.2.a., ''Power Reactor Licensees,'' of the Enforcement Policy provides credit to power reactor licensees for their CAP, allowing the agency to disposition either NRC-inspector-identified or licensee-identified SL IV violations as NCVs if the violations are entered into a CAP. The current Policy does not allow the agency to disposition NRC-inspector-identified SL IV violations at fuel cycle licensees as NCVs. To disposition a SL IV violation as a NCV at any NRC licensee other than a power reactor licensee, Section 2.3.2.b., ''All Other Licensees,'' of the Enforcement Policy requires, in addition to the criteria stated above, the licensee to have already identified the violation.

The staff proposes the following changes to the Enforcement Policy to provide fuel cycle licensees credit for a CAP. (Note that until the NRC develops inspection procedures establishing criteria that a fuel cycle licensee must meet for approval of its CAP and until the NRC completes inspections to ensure that a fuel cycle licensee's CAP is acceptable, criteria for the disposition of SL IV violations as NCVs at fuel cycle licensees will remain as stated in Section 2.3.2.b. of this Policy.)

- Revise the title of Section 2.3.2.a. from ''Power Reactor Licensees'' to ''Licensees or Applicants with an Approved Corrective Actions Program.''
- Insert a footnote in Section 2.3.2.a that states, ''NRC approval of a licensee's corrective action program will be determined based on the results of applicable NRC inspections.''
- Revise the title of Section 2.3.2.b. from ''All Other Licensees'' to ''All Other Licensees or Applicants.''

3. Civil Penalties to Individuals Who Disclose Safeguards Information

The current Enforcement Policy provides limited guidance on the topic of civil penalties to individuals who release Safeguards Information (SGI). Therefore, the NRC staff is proposing additional Policy guidance for use in determining when the agency should issue civil penalties to individuals who release SGI. This additional guidance, if approved by the Commission, would provide the guidance as an assessment tool for the staff. The NRC will determine the appropriateness of civil penalties on a case-by-case basis, depending on the circumstances and significance associated with each case.

The staff is proposing a base civil penalty of $3,500 for individuals who release SGI. The addition of a new category in Table A of Section 8.0, ''Table of Base Civil Penalties,'' of the Enforcement Policy will reflect this base civil penalty. Table B will apply when the NRC must determine a civil penalty associated with SL I, II, and III violations.

Currently, Section 4.3, ''Civil Penalties to Individuals,'' of the Policy addresses the use of civil penalties to individuals as follows:

> Except for individuals subject to civil penalties under Section 206 of the ERA [Energy Reorganization Act], as amended, the NRC will not normally impose a civil penalty against an individual. However, Section 234 of the AEA gives the Commission authority to impose civil penalties on ''any person.'' Furthermore, any person, whether or not a licensee of the Commission, who violates any regulations adopted under Section 147, ''Safeguards Information,'' of the AEA will be subject to the full range of enforcement sanctions, including civil penalties. Section 11s of the AEA broadly defines ''person'' to include individuals, a variety of organizations, and their representatives or agents.

The staff proposes to add a new section to the Enforcement Policy (*i.e.,* Section 4.3.1, ''Individual Civil Penalty for Release of Safeguards Information Violations'') to provide the guidance necessary to determine civil penalties for SGI violations. The proposed Section 4.3.1 would read as follows:

> 4.3.1 Individual Civil Penalty for Release of Safeguards Information Violations
>
> Civil penalty considerations for violations by individuals who release SGI and who are not employed by an NRC licensee or contractor differ from those for licensees and contractors who release SGI. The NRC will typically not (with the possible exception of a deliberate release of SGI) issue civil penalties to individuals for violations of SGI requirements if that individual's employer (a licensee or contractor) placed the violation in its corrective action program and has taken, or plans to take, corrective actions to restore compliance.
>
> Table A in Section 8.0 of this Policy lists the base civil penalty for individuals who release SGI. The intent of civil penalties to individuals is to serve as a deterrent; these penalties generally do not require a base civil penalty as high as that issued to a licensee

or contractor. However, willful violations may support a civil penalty outside of the range listed in Section 8.0. Additionally, the NRC should consider an individual's reasons for disclosing SGI (*e.g.,* economic gain or expression of views) and the willingness of the individual to correct or mitigate the release of information in determining the final civil penalty amount.

Section 6.13, ''Information Security,'' of this Policy provides examples of violations to help determine the severity levels of violations. Also, in determining the appropriate severity level for the release of SGI, the NRC will consider the type of SGI information disclosed, its availability to the public, the damage or vulnerability that the information caused or may cause to the licensee that possessed ownership of the SGI, and the damage that the information caused or could cause to public health and safety. The NRC will also use SGI-related significance determination process (under the Reactor Oversight Process) information, when available, to inform the severity level determination.

4. Export/Import of Regulated Material-Violation Examples

Section 2.2.5, ''Export and Import of NRC-Regulated Radioactive Material and Equipment,'' of the Enforcement Policy currently addresses the use of enforcement for violations of the agency's export and import requirements in 10 CFR part 110, ''Export and Import of Nuclear Equipment and Material.''

The staff proposes a minor revision to the title of Section 2.2.5 for consistency with the current title of 10 CFR part 110, as follows: ''Export and Import of Nuclear Equipment and Material.'' In addition, the staff will also insert a reference correction in the last sentence, thus replacing the regulation reference in the last parenthetical statement of this paragraph, as follows:

2.2.5 Export and Import of Nuclear Equipment and Material

The NRC will normally take enforcement action for violations of the agency's export and import requirements in 10 CFR part 110, ''Export and Import of Nuclear Equipment and Material,'' for radioactive material and equipment within the scope of the agency's export and import licensing authority (10 CFR 110.8, 10 CFR 110.9, and 10 CFR 110.9a) for (1) Completeness and accuracy of information, (2) reporting and recordkeeping requirements (10 CFR 110.23, 10 CFR 110.26, 10 CFR 110.50, and 10 CFR 110.54), and (3) adherence to general and specific licensing requirements (10 CFR 110.20–27 and 10 CFR 110.50).

Also, the current Policy does not contain violation examples for export and import activities that depict likely SLs that the staff can use to assess the relative significance of various violations of 10 CFR part 110. As a result, the staff proposes the following change to incorporate a new section (Section 6.15, ''Export and Import Activities'') in the Enforcement Policy to provide example violations and proposed SLs for export and import activities:

6.15 Export and Import Activities

Several of the following violation examples involve deliberateness or careless disregard. For those examples, the normal Enforcement Policy process for discretion to potentially escalate the severity level of the violation based on willfulness is not necessary.

a. Severity Level I violations involve, for example:

1. Deliberate misrepresentation of facts, with the knowledge of a licensee official, that led to the export of licensable and sensitive equipment or material in quantities of concern to a destination that, if represented accurately, would not have been authorized by the NRC (or other authority); or

2. Deliberate misrepresentation of facts that led to unauthorized individuals obtaining sensitive nuclear equipment or materials in quantities of concern;

b. Severity Level II violations involve, for example:

1. Failure to provide notice of 10 CFR part 110, Appendix P, material import as required by 10 CFR 110.50, which, if the notice had been provided, would have prompted the NRC to take action to block the import;

2. Misrepresentation of facts in careless disregard of requirements, with the knowledge of a licensee official, for the export or import of radioactive or byproduct materials, such as those involving the completeness or accuracy of the information that, if represented accurately, would not have been authorized by the NRC (or other authority); or

3. Inaccurate or incomplete information provided or maintained that led to unauthorized individuals possessing radioactive materials

c. Severity Level III violations involve, for example:

1. Failure to submit timely notification of the import of 10 CFR part 110, Appendix P, material, as required by 10 CFR 110.50;

2. Inaccurate or incomplete information on exports or imports of radioactive or byproduct materials such that, if the information had been represented accurately, an activity would not have been authorized by the NRC (or other authority) or would have resulted in the NRC reconsidering the authorization of the activity, issuing a request for additional information (RAI), or conducting an inspection to resolve the matter;

3. Export of byproduct material in quantities of concern to individuals/entities not authorized to receive such materials; or

4. Failure to obtain a specific license before the export or import of any NRC licensable equipment, special nuclear material, and source or byproduct materials, when required.

d. Severity Level IV violations involve, for example:

1. Failure to submit timely reports as specified in 10 CFR 110.54;

2. Export or import of nuclear equipment or materials in excess of the limits specified in a specific license or license amendment, when such activity would have been authorized by the NRC (or other authority);

3. Export of byproduct material exceeding the possession limits authorized for the ultimate consignee, not involving a Severity Level I, II, or III violation;

4. Unauthorized export of foreign-obligated material in violation of 10 CFR 110.50(b)(3), not involving a Severity Level I, II, or III violation; or

5. Failure to obtain a specific license to export or import NRC licensable equipment, special nuclear material, and source or byproduct materials that are not authorized by the general licenses in 10 CFR 110.21 through 110.27 and not involving a Severity Level I, II, or III violation.

5. Civil Penalties for Loss of Control of Regulated Material

On December 18, 2000 (65 FR 79139), the NRC published a notice amending NUREG–1600, ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (the Enforcement Policy), to establish separate base civil penalty amounts for loss, abandonment, or improper transfer or disposal of sealed sources and devices containing NRC-licensed material. The intent was to better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device.

At that time, the Commission determined that normally a civil penalty of at least the base civil penalty amount was appropriate for these types of violations to provide deterrence and an economic incentive for licensees to expend the necessary resources to ensure compliance. Such a deterrent measure would also result in an enforcement action that properly reflected the safety and security significance of the loss of control of such material.

The normal civil penalty assessment process assigns varying civil penalty amounts based on, for example, a licensee's past enforcement history, whether the licensee self-identified the violation, and whether the licensee took prompt and comprehensive corrective action. However, the lost source policy, described in Section 2.3.4 of the Enforcement Policy, stipulates that the NRC will normally assign a civil penalty of at least the base amount for violations involving the loss, abandonment, or improper transfer or disposal of radioactive source material, regardless of the outcome of the normal civil penalty assessment process. Therefore, the factors that may result in the mitigation or escalation of a civil penalty for other violations (*i.e.,* past enforcement history, identification, and corrective action) have not typically been considerations for these types of violations.

Section 2.3.4 of the Enforcement Policy currently addresses the civil penalties associated with loss of regulated material as follows:

The NRC considers civil penalties for violations associated with loss of regulated material (*i.e.,* the NRC's lost source policy). Loss of NRC-regulated material is a significant regulatory and security concern because of potential unauthorized possession, use, or overexposure to members of the public. Violations where regulated radioactive material remains out of the required control of a licensee for any period of time are dispositioned separately, regardless of the use, license type, quantity, or type of radioactive material (see Table of Base Civil Penalties, Tables A and B, in Section 8.0 of this Policy). Such violations may include, but are not limited to, for example, the loss, abandonment, improper transfer, or disposal of a device, source, or other form of regulated material. Notwithstanding the normal civil penalty assessment process, in cases where a licensee has lost required control of its regulated radioactive material for any period of time, the NRC normally will impose at least a base civil penalty. However, the Agency may mitigate or escalate a civil penalty amount based on the merits of a specific case. When appropriate, the NRC may consider, for example, information concerning the estimated or actual cost of authorized disposal and/or the actual consequences of the material remaining out of the control of the licensee.

In accordance with Section 2.3.4 of the current Enforcement Policy, the NRC may mitigate or escalate the amount of a civil penalty based on the merits of a specific case. Therefore, even under the current Enforcement Policy, the NRC may consider information concerning the estimated or actual cost of authorized disposal and the actual consequences of the loss, abandonment, or improper transfer or disposal of the regulated material for cases subject to the lost source policy. Additionally, even though Section 2.3.4 of the Enforcement Policy permits the NRC to consider the merits of a specific case when determining a civil penalty amount, this flexibility has not typically been exercised for lost source violations. As a result, most violations involving lost sources that have met the threshold for escalated enforcement have resulted in civil penalties of at least the base amount. Tables A and B in Section 8.0 of the Enforcement Policy show the current base civil penalties for violations involving the loss, abandonment, or improper transfer or disposal of a sealed source or device.

In response to the Commission's direction in SRM–SECY–09–190, the staff is proposing a revision to the Enforcement Policy to remove language stating that the NRC will assess at least a base civil penalty for violations involving loss of control of radioactive materials. The intent is to maintain the existing lost source policy to issue at least a civil penalty while giving the staff the flexibility to disposition those cases where a licensee has lost NRC regulated material, but took immediate action to recover it, in a timely manner, with little or no risk to the public while the material was not in the licensee's control. In such cases where loss of control is the issue, rather than actual lost material, the normal civil penalty assessment process, described in Section 2.3.4, would be used rather than typically issuing at least a base civil penalty as required by the current lost source policy. The staff will revise Section 2.3.4 to indicate that, notwithstanding the normal civil penalty assessment process, the NRC may exercise discretion and impose a civil penalty in cases in which a licensee has lost required control of its regulated radioactive material. As a result, the staff will revise Section 7.0, ''Glossary,'' of the Enforcement Policy to reflect the proposed changes in the definition of ''lost source policy'' and will revise Note 3 in Table A of Section 8.0. The current definition of ''lost source policy'' in Section 7.0 of the Enforcement Policy states the following:

Lost Source Policy is the policy of the NRC in which a civil penalty of at least the base civil penalty amount is normally issued in a case where regulated material is out of the control of the licensee for any period of time, regardless of the use, licensee type, quantity, or type of radioactive material (examples include loss, abandonment, improper transfer, or improper disposal of regulated material). Violations associated with loss of control of regulated material normally result in escalated enforcement actions.

Note 3 in Table A of Section 8.0 currently states the following:

These base civil penalty amounts have been determined to be approximately 3 times the average cost of disposal. For specific cases, the NRC may adjust these amounts to correspond to 3 times the actual cost of authorized disposal.

The staff proposes to replace the previously stated paragraph in Section 2.3.4 of the Policy with the following paragraph:

The NRC considers civil penalties for violations associated with loss of regulated material (*i.e.,* the NRC's lost source policy). The loss of NRC-regulated material is a significant regulatory and security concern because of the potential unauthorized possession or use of the material and because of the potential for overexposure to members of the public from its misuse. Such violations may include but are not limited to, for example, the loss, abandonment, improper transfer, or improper disposal of a device, source, or other form of regulated material. Notwithstanding the normal civil penalty assessment process, in cases where a licensee has lost required control of its regulated radioactive material, the NRC may exercise discretion and impose a civil penalty. However, the agency may mitigate or escalate a civil penalty amount based on the merits of a specific case. When appropriate, the NRC may consider, for example, information on the estimated or actual cost of authorized disposal and the actual consequences of the material remaining out of the control of the licensee, radiation workers, or the environment. Normally, the NRC will not apply the lost source policy to generally licensed devices that are not required to be registered in accordance with 10 CFR 31.5(c)(13)(i). The NRC will continue to apply the normal Enforcement Policy in those cases that require the application of a civil penalty.

As a result of this proposed change in Section 2.3.4, the staff proposes the following change to the definition of ''lost source policy'' in Section 7.0:

Lost Source Policy is the policy of the NRC in which a civil penalty may be issued for violations resulting in regulated source material being out of the control of the licensee regardless of the use, license type, quantity, or type of regulated material (*e.g.,* loss, abandonment, improper transfer, or improper disposal of regulated material).

The staff proposes the following change to Note 3 in Table A of Section 8.0:

These base civil penalty amounts have been determined to be approximately 3 times the average cost of disposal. For specific cases, the NRC may adjust these amounts to correspond to the estimated or actual cost of authorized disposal for the particular material in question.

In addition, the staff will revise the Enforcement Manual to clarify circumstances that may warrant mitigation (or escalation) of the base civil penalty amount for violations involving the loss of radioactive material. Further, the staff will add language to indicate that the NRC should consider escalating the civil penalty above the base amount for cases involving willfulness or that resulted in actual safety consequences or both.

III. Procedural Requirements

Paperwork Reduction Act

This proposed policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond

to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801–808), the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 29th day of August 2011.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2011–22646 Filed 9–2–11; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

RIN 3133–AD95

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA is issuing proposed amendments to its rule governing corporate credit unions (corporates). The proposed amendments clarify certain provisions and make some technical corrections to the rule. The amendments: delete the definition of ''daily average net risk-weighted assets,'' revise the definition of ''net assets'' to exclude Central Liquidity Facility (CLF) stock subscriptions, clarify certain requirements regarding investment action plans, clarify the weighted average life (WAL) tests, revise the consequences of WAL violations, substitute the term ''core capital'' for the phrase ''the sum of retained earnings and paid-in capital,'' correct a section heading, and correct a model form instruction.

DATES: Comments must be received by October 6, 2011. The NCUA Board does not expect significant comment on these amendments and so is issuing the proposal with a 30-day comment period.

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

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

NCUA Web site: http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx. Follow the instructions for submitting comments.

E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on ''Proposed Rule—Corporate Credit Unions'' in the e-mail subject line.

Fax: (703) 518–6319. Use the subject line described above for e-mail.

Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Hand Delivery/Courier: Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel, at the address above or telephone (703) 518–6540; or David Shetler, Deputy Director, Office of Corporate Credit Unions, at the address above or telephone (703) 518–6640.

SUPPLEMENTARY INFORMATION:

A. Background and Proposed Amendments

In 2010, NCUA published a final rule containing extensive revisions to its corporate rule at 12 CFR part 704. 75 FR 64786 (October 20, 2010). NCUA subsequently issued technical corrections to the final rule and further revisions to part 704. 76 FR 16235 (March 23, 2011); 76 FR 23861 (April 29, 2011). In order to clarify certain provisions and relieve regulatory burden, the NCUA Board is proposing additional changes to part 704. The proposed changes are explained below.

§ 704.2 Definition of ''daily average net risk-weighted assets''

Prior to the 2010 final rule, the NCUA Board issued a proposed rule to revise part 704 in 2009. 74 FR 65210 (December 9, 2009). The 2009 proposal defined the denominator of two new risk based capital ratios as moving ''daily average net risk-weighted assets'' (DANRA). Some commenters on the proposal questioned the burden of daily risk weighting to produce the moving DANRA figure. The Board agreed that a daily calculation was not necessary and in the final rule replaced the denominator for both new ratios with a new ''moving monthly average net risk weighted assets'' (MMANRA). 75 FR at 64796. The term ''DANRA'' is not used in part 704, and its inclusion in § 704.2 was an oversight. This proposal removes the DANRA definition from § 704.2.

Section 704.2 Definition of ''net assets''

Section 704.2 defines ''net assets,'' in relevant part, as ''total assets less loans guaranteed by the NCUSIF and member reverse repurchase transactions.'' The Board is proposing to amend the definition to also exclude CLF stock subscriptions. The Board believes the credit risk of carrying this asset is negligible and warrants such treatment, as CLF stock is putable at par. Further, the Board strongly believes that all natural person credit unions should have access to a back-up liquidity provider that can meet their liquidity demands in the event of a wide-spread market disruption. The CLF can supply this liquidity if its borrowing authority is not diminished by a reduction of its stock subscriptions. This proposed change should encourage continued CLF participation by corporates, which in turn will facilitate corporates providing a systemic liquidity benefit to natural person credit unions through offering CLF access as agents.

Section 704.6 Requirements for Investment Action Plans

Section 704.10 sets out consequences, potentially including the preparation of a written investment action plan, for possessing an investment that fails to meet a requirement of part 704. 12 CFR 704.10. Sections 704.6(c)(3) and (f)(4) trigger these consequences for violations of certain concentration limits and credit rating requirements. 12 CFR § 704.6(c)(3) and (f)(4). To clarify the applicability of these triggering provisions, the Board proposes to move them to a new paragraph at § 704.6(h). Under proposed § 704.6(h), an investment will be subject to the requirements of § 704.10 if it violates any of the concentration limits or credit rating requirements of § 704.6.

The Board notes that § 704.6(f)(4)(i) provides that an investment is subject to the requirements of § 704.10 if its credit rating is downgraded, after purchase, ''below the minimum rating requirements of this part.'' 12 CFR

704.6(f)(4)(i). However, section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires NCUA to review its regulations for any references to using credit ratings to assess the creditworthiness of an investment, remove those references, and substitute other standards of creditworthiness.[1] On February 17, 2011, the NCUA Board issued a Notice of Proposed Rulemaking (NPRM) to implement Section 939A. 76 FR 11164 (March 1, 2011). The NPRM recodified § 704.6 (f)(4)(i) at § 704.6(f)(3)(i) and revised it to state than an investment is subject to § 704.10 if ''[t]here is reason to believe that the obligor no longer has a very strong capacity to meet its financial obligations for the remaining projected life of the security.'' *Id.* at 11171. Although the NCUA Board has not finalized the February 2011 NPRM, this proposed rule includes the proposed revised language at new § 704.6(h)(1).

Section 704.8 Clarifying the WAL Tests

Sections 704.8(f) and 704.8(g) establish certain WAL limits for corporate loan and investment portfolios and require each corporate to test those assets periodically for compliance. 12 CFR 704.8(f) and (g). NCUA intended to allow corporates to include cash in the WAL calculation, and the proposed rule clarifies that intent. The proposed rule substitutes the phrase ''loan and investment portfolio'' in paragraphs (f) and (g) with the phrase ''financial assets, consisting of cash, investments, and loans.'' The proposed rule retains the current rule's exclusion of derivative contracts and equity investments from the WAL calculation.

Section 704.8 Consequences of WAL Violations

Section 704.8(j) provides consequences for a corporate's violation of the interest rate sensitivity and WAL conditions of § 704.8 (d), (f), and (g). 12 CFR 704.8(j). These consequences can include reporting requirements, preparation of a written action plan, and capital category reclassification under § 704.4. To reduce regulatory burden, the NCUA Board has determined that violations of WAL conditions should not be subject to capital category reclassification and proposes exempting such violations from the requirements of § 704.8(j)(2)(ii) and (iii). However, persistent WAL violations could still trigger the reporting and action plan requirements of § 704.8(j)(1) and (2)(i).

[1] Public Law 111–203, § 939A (2010).

Section 704.18 Fidelity Bond Maximum Deductible

Section 704.18(e)(1) provides a table for corporates to calculate the maximum deductible allowed for fidelity bonds purchased for employees and officials. 12 CFR § 704.18(e)(1). The maximum deductible is based on a corporate's core capital ratio and a percentage of the sum of its retained earnings and paid-in capital. The 2010 revision to part 704 changed the term ''paid-in capital'' to ''perpetual contributed capital,'' but neglected to change the reference in § 704.18. *See* 75 FR 64786 (October 20, 2010).

The NCUA Board is now proposing to change the phrase ''the sum of its retained earnings and paid-in capital'' to the term ''core capital.'' Section 704.2 defines ''core capital'' as ''the sum of: (1) Retained earnings; (2) Perpetual contributed capital; (3) The retained earnings of any acquired credit union, or of an integrated set of activities and assets, calculated at the point of acquisition, if the acquisition was a mutual combination; and (4) Minority interests in the equity accounts of CUSOs that are fully consolidated. However, minority interests in consolidated ABCP programs sponsored by a corporate credit union are excluded from the credit union's core capital or total capital base if the corporate credit union excludes the consolidated assets of such programs from risk-weighted assets pursuant to Appendix C of this part.'' 12 CFR § 704.2. The Board is proposing this substitution, rather than simply replacing ''paid-in capital'' with ''perpetual contributed capital'' because the table already requires the calculation of core capital in deriving the core capital ratio.

Section 704.19 Correction to Section Heading

The 2009 proposed revisions to part 704 added new § 704.19, ''Disclosure of executive and director compensation.'' 74 FR at 65210, 65252 (December 9, 2009). The proposal would have required corporates to disclose annually the compensation, in dollar terms, of each senior executive officer and director. *Id.* at 65275. In response to comments, the NCUA Board determined to limit the disclosure requirement to approximately the top ten percent of employees with, generally, a minimum of three employees who must disclose and a maximum of five. In addition, the Board determined to remove the reference to directors, stating that it was highly unlikely that a director, in his or her capacity as a director, would be among the most highly compensated individuals at the corporate. 75 FR 64786, 64818 (October 20, 2010). This was done in the text of § 704.19 but not in the heading. The correction would harmonize the two by removing the words ''and director'' from the heading.

Appendix A, Model Form D

The 2010 final rule included an incorrect date instruction on Model Form D in Appendix A. *Id.* at 64851. Model Form D included introductory text indicating that the form was for use before October 20, 2011. In fact, because Model Form D deals with nonperpetual capital accounts, the form should be used only on and after October 20, 2011. The proposed correction would replace the word ''before'' with the phrase ''on and after.''

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $10 million in assets). The proposed rule applies only to corporate credit unions, all of which have assets well in excess of $10 million. Accordingly, the proposed rule will not have a significant economic impact on a substantial number of small credit unions, and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various

levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

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

List of Subjects in 12 CFR Part 704

Credit unions, Corporate credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on August 29, 2011.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, the National Credit Union Administration proposes to amend 12 CFR part 704 as set forth below:

PART 704—CORPORATE CREDIT UNIONS

1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1772a, 1781, 1789, and 1795e.

2. Amend § 704.2 by removing the definition of ''daily average net risk-weighted assets'' and revising the definition of ''net assets'' to read as follows:

§ 704.2 Definitions.

* * * * *

Net assets means total assets less Central Liquidity Facility (CLF) stock subscriptions, loans guaranteed by the NCUSIF, and member reverse repurchase transactions. For its own account a corporate credit union's payables under reverse repurchase agreements and receivables under repurchase agreements may be netted out if the GAAP conditions for offsetting are met. Also, any amounts deducted from core capital in calculating adjusted core capital are also deducted from net assets.

* * * * *

3. Amend § 704.6 by removing paragraphs (c)(3) and (f)(4) and adding new p(h) to read as follows:

§ 704.6 Credit risk management.

* * * * *

(h) Requirements for investment action plans. An investment is subject to the requirements of § 704.10 of this part if:

(1) There is reason to believe that the obligor no longer has a very strong capacity to meet its financial obligations for the remaining projected life of the security; or

(2) The investment is part of an asset class or group of investments that exceeds the issuer, sector, or subsector concentration limits of this section. For purposes of measurement, each new credit transaction must be evaluated in terms of the corporate credit union's capital at the time of the transaction. An investment that fails a requirement of this section because of a subsequent reduction in capital will be deemed non-conforming. A corporate credit union is required to exercise reasonable efforts to bring nonconforming investments into conformity within 90 calendar days. Investments that remain nonconforming for more than 90 calendar days will be deemed to fail a requirement of this section and the corporate credit union will have to comply with § 704.10 of this part.

4. Amend § 704.8 by:

a. Revising the first two sentences in paragraphs (f) and (g); and

b. Revising (j)(2)(ii) and (iii).

The revisions read as follows:

§ 704.8 Asset and liability management.

* * * * *

(f) * * * The weighted average life (WAL) of a corporate credit union's financial assets, consisting of cash, investments, and loans, but excluding derivative contracts and equity investments, may not exceed 2 years. A corporate credit union must test its financial assets at least quarterly, including once on the last day of the calendar quarter, for compliance with this WAL limitation. * * *

(g) * * * The weighted average life (WAL) of a corporate credit union's financial assets, consisting of cash, investments, and loans, but excluding derivative contracts and equity investments, may not exceed 2.25 years when prepayment speeds are reduced by 50 percent. A corporate credit union must test its financial assets at least quarterly, including once on the last day of the calendar quarter, for compliance with this WAL limitation. * * *

* * * * *

(j) * * *

(2) * * *

(ii) If presently categorized as adequately capitalized or well capitalized for prompt corrective action purposes, and the violation was of paragraph (d) of this section, immediately be recategorized as undercapitalized until the violation is corrected, and

(iii) If presently less than adequately capitalized, and the violation was of paragraph (d) of this section, immediately be downgraded one additional capital category.

* * * * *

5. Amend § 704.18 by revising the table in paragraph (e)(1) to read as follows:

§ 704.18 Fidelity bond coverage.

* * * * *

(e) * * *

(1) * * *

Core capital ratio	Maximum deductible
Less than 1.0 percent	7.5 percent of core capital.
1.0–1.74 percent	10.0 percent of core capital.
1.75–2.24 percent	12.0 percent of core capital.
Greater than 2.25 percent.	15.0 percent of core capital.

* * * * *

6. Amend § 704.19 by revising the section heading to read as follows:

§ 704.19 Disclosure of executive compensation.

* * * * *

7. Amend the introductory note in Model Form D, Appendix A to Part 704, to read as follows:

Appendix A to Part 704—Capital Prioritization and Model Forms

* * * * *

Model Form D

Note: This form is for use on and after October 20, 2011, in the circumstances where the corporate credit union has determined that it will give newly issued capital priority over older capital as described in Part I of this Appendix.

* * * * *

[FR Doc. 2011–22540 Filed 9–2–11; 8:45 am]

BILLING CODE 7535–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0536; FRL–9459–9]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of

revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from biomass fuel-fired boilers. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 6, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0536, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Pérez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
PCAPCD	233	Biomass Boilers	12/10/09	05/07/10

On June 8, 2010, the submittal for PCAPCD Rule 233 was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 233 into the SIP on April 30, 1996 (61 FR 18959). PCAPCD adopted revisions to the SIP-approved version on October 11, 2007, CARB submitted it to us on March 7, 2008 and it was officially withdrawn on November 5, 2008.

C. What is the purpose of the submitted rule?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Rule 233 regulates emissions of NO_X from biomass boilers and steam generators. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193 of the Act). Section 172(c)(1) of the Act also requires nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. Additionally, ozone nonattainment areas classified as moderate or above must require RACT for all major sources of NO_X (CAA section 182(b)(2) & (f); 40 CFR section 51.912(a)). Because PCAPCD regulates an ozone nonattainment area that is classified as Severe-15 under both the 1-hr ozone and 8-hr ozone standards (40 CFR section 81.305), submitted Rule 233 must fulfill RACT requirements for NO_X.

Guidance and policy documents that we used to evaluate enforceability and RACT requirements for Rule 233 included the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990''; 57 FR

13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

5. Preamble, ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005).

6. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters'', CARB, July 18, 1991.

7. ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers'', US EPA, March 1994.

8. ''Alternative Control Techniques Document—NO_X Emissions from Utility Boilers'', US EPA, March 1994.

9. ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown'', Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, September 20, 1999.

B. Does the rule meet the evaluation criteria?

Rule 233 improves the SIP by establishing more stringent emission limits. We believe the rule is consistent with the applicable requirements and guidance regarding enforceability and SIP revisions. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

PCAPCD has not demonstrated that the NO_X emission limits for biomass boilers found in Section 301 implement RACT. The NO_X emission limits should be lowered to ensure implementation of RACT. Alternatively, PCAPCD may submit additional information to demonstrate that lower emission limits are not reasonably achievable.

D. EPA Recommendations To Further Improve the Rule

We do not currently have additional rule revisions that we recommend for the next time the local agency modifies the rule.

III. Proposed Action

EPA is proposing a limited approval of the submitted rule under sections 110(k)(3) and 301(a) of the Act. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the 2-year clock for the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the PCAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP (*see* EPA memo regarding ''Processing of State Implementation Plan (SIP) Submittals'' (July 9, 1992), available at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf*).

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP limited approval/limited disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA 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.'' ''Policies that have federalism implications'' is defined in the Executive Order 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, EPA 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 EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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.

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

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 19, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–22662 Filed 9–2–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

SUMMARY: The Health Resources and Services Administration published a notice in the **Federal Register**, (76 FR 50442, Doc. 2011–20690), on August 15, 2011, announcing the meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas on September 20, 21, and 22, 2011. The dates of the meeting and contact information were incorrect.

Correction

In the **Federal Register** published Monday, August 15, 2011 (76 FR 50442, FR Doc. 2011–20690), please make the following corrections:

In the **DATES** section, correct to read September 21, 2011, 9:30 a.m. to 6 p.m.; September 22, 2011, 9 a.m. to 6 p.m.; and September 23, 2011, 9 a.m. to 3 p.m. EST.

In the **FOR FURTHER INFORMATION CONTACT** section, correct to read: For more information, please contact LaCrystal McNair, National Center for Health Care Workforce Analysis, Bureau of Health Professions, Health Resources and Services Administration, Room 9–29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–3578, E-mail: *lmcnair@hrsa.gov* or visit *http://www.hrsa.gov/advisorycommittees/shortage/.*

Dated: August 30, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–22586 Filed 9–2–11; 8:45 am]

BILLING CODE 4165–15–P

Notices

Federal Register

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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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0016]

Request for Information on Consumer Financial Products and Services Offered to Servicemembers

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and Request for Information.

SUMMARY: Section 1013(e)(1) of the Consumer Financial Protection Act of 2010 requires the Bureau of Consumer Financial Protection (''CFPB'' or ''Bureau'') to educate and empower servicemembers and their families to make better informed decisions regarding consumer financial products and services; to coordinate with CFPB's Consume Response function to monitor consumer complaints by servicemembers and their families; and to coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, servicemembers and their families. Consistent with this requirement, the CFPB Office of Servicemember Affairs seeks information on consumer financial products and services that are currently being offered to or used by servicemembers and their families. Among other things, the office is particularly interested in information on products and services (and associated programs and policies) that are tailored to the unique financial needs of servicemembers and their families. The information provided will help the office develop a knowledge base of consumer financial products and services utilized by servicemembers that will inform the office's planning with respect to education and outreach initiatives, the monitoring of consumer complaints, and other consumer protection measures. CFPB encourages comments from consumers, financial service providers, organizations, and other members of the public.

DATES: *Comment Due Date:* September 20, 2011.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0016, by any of the following methods:

- *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *MilitaryResponse@cfpb.gov.*
- Mail or Hand Delivery/Courier in Lieu of Mail: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the question to which you are responding at the top of each response. 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 1801 L Street, NW., Washington DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information such as account numbers or Social Security numbers should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please call Monica Jackson at 202–435–7275.

SUPPLEMENTARY INFORMATION: The Bureau seeks public comment on the following questions:

1. What consumer financial products and services are currently offered to or utilized by servicemembers and their families?

2. What consumer financial products and services (and associated programs, policies, and practices) are tailored to the unique financial needs of servicemembers and their families or are marketed specifically to servicemembers and their families? Among other things, the office is particularly interested in:

a. Information on consumer financial products or services that are designed to address deployments, permanent-change-of-station moves, overseas assignments, relocations, and similar circumstances.

b. Information on short-term lending products that are tailored to the needs of servicemembers and their families.

c. Information on consumer financial products or services that are comparable to the Department of Defense (DoD) Savings Deposit Program.

3. What financial education opportunities are financial service providers offering to servicemembers and their families, both in person and online?

4. What programs, policies, accommodations, or benefits do financial service providers currently provide to servicemembers and their families that may exceed those required by statute? Among other things, comments could address expanded application of Servicemembers Civil Relief Act protections and fraud protections.

5. What unique assistance, if any, is currently offered by financial service providers to servicemembers and their families who are distressed homeowners? Among other things, comments could address servicemember-specific mortgage modifications; accommodations for servicemembers with Permanent Change of Station Orders; and assistance for wounded, ill or injured servicemembers, or surviving spouses of deceased servicemembers.

6. What marketing and communication strategies are currently used by financial service providers to inform servicemembers and their families of consumer financial products and services; programs or accommodations for servicemembers and their families; and financial educational opportunities? Which strategies tend to be more effective and which are less effective?

Dated: August 29, 2011.

Hollister K. Petraeus,

Assistant Director, Office of Servicemember Affairs.

[FR Doc. 2011–22595 Filed 9–2–11; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–11–0072; NOP–11–13]

Notice of 2011 National Organic Certification Cost-Share Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Funds Availability: Inviting Applications from State Departments of Agriculture for the National Organic Certification Cost-Share Program.

SUMMARY: This Notice invites all States of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico, (hereinafter collectively called States) to submit an Application for Federal Assistance (Standard Form 424) and to enter into a cooperative agreement with the Agricultural Marketing Service (AMS) for the allocation of National Organic Certification Cost-Share Funds. Beginning in Fiscal Year 2008, the AMS allocated $22.0 million for the national organic certification cost-share program. These funds will be allocated annually to States through cooperative agreements until exhausted. Funds are available to States interested in providing cost-share assistance to organic producers and handlers certified under the USDA Organic Regulations (7 CFR 205). States interested in obtaining cost-share funds must submit an Application for Federal Assistance and enter into a cooperative agreement with AMS for allocation of funds.

DATES: Completed Applications for Federal Assistance and signed cooperative agreements must be received by the National Organic Program (NOP) no later than September 23, 2011.

ADDRESSES: Applications for federal assistance shall be submitted via *http://www.grants.gov.* Paper applications will not be accepted. Instructions for submitting applications are available on the National Organic Program's Web site at *http://www.ams.usda.gov/NOPCostSharing.* Signed cooperative agreements should be sent via express mail to Betsy Rakola, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/NOP, Room 2646–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268.

FOR FURTHER INFORMATION CONTACT: Betsy Rakola, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/NOP, Room 2646–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252. E-mail: *Betsy.Rakola@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This National Organic Certification Cost-Share Program is authorized under 7 U.S.C. 6523, as amended by section 10301 of the Food, Conservation and Energy Act of 2008 (Act). The Act authorizes the Department to provide certification cost-share assistance to producers and handlers of organic agricultural products in all States. Beginning in Fiscal Year 2008, the AMS allocated $22 million for this program to be distributed to interested States, until funding has been exhausted. The Program provides financial assistance to organic producers and handlers certified to the USDA Organic Regulations (7 CFR 205). The National Organic Program is authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*).

To participate in the program, interested States, through their State Department of Agriculture, must complete an Application for Federal Assistance (Standard Form 424) and enter into a written cooperative agreement with AMS. State Department of Agriculture refers to agencies, commissions, or departments of State government responsible for implementing regulation, policy or programs on agriculture within their State. The program will provide cost-share assistance, through participating States, to organic producers and handlers receiving certification or incurring expenses for the continuation of certification by a USDA accredited certifying agent during the period of October 1, 2011, through September 30, 2012. Under the Act, cost-share assistance payments are limited to 75% (seventy-five percent) of an individual producer's or handler's certification costs up to a maximum of $750 (seven-hundred and fifty dollars) per year. To receive cost-share assistance, organic producers and handlers should contact their State Departments of Agriculture. Procedures for applying are outlined in the program's policies and procedures document at *http://1.usa.gov/OrganicCostShare.*

For producers in the states of Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming, cost-share funding is available under the Agricultural Management Assistance (AMA) Organic Certification Cost-Share Program. The AMA program is authorized under Section 1524 of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501–1524). As provided in a notice of Funds Availability published separately in the **Federal Register,** completed applications for the AMA federal assistance program, along with signed cooperative agreements, must be received by the NOP no later than September 23, 2011. Information on the AMA program can be found on the NOP's Web site at *http://www.ams.usda.gov/NOPCostSharing.*

How to Submit Applications: To receive funds for cost-share assistance, a State Department of Agriculture must complete an Application for Federal Assistance (Standard Form 424) and enter into a written cooperative agreement with AMS. Interested States should submit the Application for Federal Assistance, (Standard Form 424) electronically via *Grants.gov,* the Federal grants Web site, at *http://www.grants.gov.* For information on how to use *Grants.Gov,* please consult *http://www.grants.gov/GetRegistered.* Applications must be filed by Friday, September 23, 2011. Cooperative agreements will be sent by the AMS to participating State Departments of Agriculture via express mail. The cooperative agreement must have the original signature of an official who has authority to apply for Federal assistance. The signed cooperative agreement must be sent by express mail and received by the NOP by September 23, 2011 at the address specified previously.

The National Organic Certification Cost-share Program is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.171. Subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally-assisted programs. Additional information on the National Organic Certification Cost-share Program can be found on the NOP's Web site at *http://www.ams.usda.gov/NOPCostSharing.*

Authority: 7 U.S.C. 6523.

Dated: August 29, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–22611 Filed 9–2–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–11–0071; NOP–11–12]

Notice of Agricultural Management Assistance Organic Certification Cost-Share Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Funds Availability: Inviting Applications from State Departments of Agriculture for the Agricultural Management Assistance Organic Certification Cost-Share Program.

SUMMARY: This Notice invites the following eligible States: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming, to submit an Application for Federal Assistance (Standard Form 424), and to enter into a Cooperative Agreement with the Agricultural Marketing Service (AMS) for the allocation of organic certification cost-share funds. The AMS has allocated $1.5 million for this organic certification cost-share program in Fiscal Year 2011. Funds are available to 16 designated States to provide cost-share assistance to organic crop and livestock producers certified under the USDA Organic Standards (7 CFR 205). Eligible States interested in obtaining cost-share funds for their organic producers must submit an Application for Federal Assistance via *http://www.grants.gov* and enter into a cooperative agreement with AMS for the allocation of funds.

DATES: Completed Applications for Federal Assistance and signed cooperative agreements must be received by the National Organic Program (NOP) no later than September 23, 2011.

ADDRESSES: Applications for Federal Assistance must be submitted via *Grants.Gov.* Paper applications will not be accepted. Instructions and additional information are available on the National Organic Program's Web site at *http://www.ams.usda.gov/NOPCostSharing.*

Signed cooperative agreements should be sent via express mail to Betsy Rakola, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/NOP, Room 2640–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268.

FOR FURTHER INFORMATION CONTACT: Betsy Rakola, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/NOP, Room 2640–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252. E-mail: *Betsy.Rakola@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance (AMA) Program authorized under the Federal Crop Insurance Act (FCIA), as amended (7 U.S.C. 1524). Under the applicable FCIA provisions, the Department is authorized to provide cost-share assistance to organic producers in the States of Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The AMS has allocated $1.5 million for this organic certification cost-share program in Fiscal Year 2011. This program provides financial assistance to organic producers certified under the USDA Organic Regulations (7 CFR part 205), which were authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*). This program is in addition to and separate from the National Organic Certification Cost-Share Program, which is also administered by AMS and is open to all States and U.S. Territories.

To participate in the program, eligible States, through their State Departments of Agriculture, must complete an Application for Federal Assistance (Standard Form 424) and enter into a written cooperative agreement with AMS. State Department of Agriculture refers to agencies, commissions, or departments of State government responsible for implementing regulation, policy or programs on agriculture within their State. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or incurring expenses for the continuation of certification by a USDA accredited certifying agent during the period of October 1, 2011, through September 30, 2012. The Department has determined that payments will be limited to 75% (seventy-five percent) of an individual producer's certification costs, up to a maximum of $750 (seven-hundred and fifty dollars).

To receive cost-share assistance, organic producers should contact their State agencies. Procedures for applying are outlined in the cost share policies and procedures at *http://1.usa.gov/OrganicCostShare.* The total amount of cost-share payments provided to any eligible producer under all AMA programs cannot exceed $50,000.

How to Submit Applications: To receive fund allocations to provide cost-share assistance, a State Department of Agriculture must complete an Application for Federal Assistance (Standard Form 424), and enter into a written cooperative agreement with AMS. Interested States must submit the Application for Federal Assistance (Standard Form 424) electronically via *Grants.gov,* the Federal grants Web site, at *http://www.grants.gov.* For information on how to use *Grants.Gov,* please consult *http://www.grants.gov/GetRegistered.* Applications must be filed by Friday, September 23, 2011. Cooperative agreements will be sent by the AMS to participating State Departments of Agriculture via express mail. The cooperative agreement must have the original signature of an official who has authority to apply for Federal assistance. The signed cooperative agreement must be sent by express mail or courier service and received by the NOP at the address above by September 23, 2011.

The AMA Organic Certification Cost-Share Program is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.171. Subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally-assisted programs. Additional information on the AMA Organic Certification Cost-Share Program can be found on the NOP's Web site at *http://www.ams.usda.gov/NOPCostSharing.*

Authority: 7 U.S.C. 1524.

Dated: August 29, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–22613 Filed 9–2–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Renew Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The notice announced Agricultural Research Service intent to seek comments on renewing the National Arboretum's information collection that expires on December 31, 2011. The notice was published in the **Federal Register** on August 26, 2011.

FOR FURTHER INFORMATION CONTACT: Deborah Cicala, 202–245–4553.

Correction

In the **Federal Register** of August 26, 2011, in FR Doc. 2011–21847, on pages 53397–53398 in the supplementary information section, correct to read as follows:

OMB Number: 0518–0024.

Yvette Anderson,

Federal Register Liaison Officer for Agriculture Research Service.

[FR Doc. 2011–22658 Filed 9–2–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intent To Prepare an Environmental Impact Statement; Umatilla National Forest, Walla Walla Ranger District; Oregon;

Tollgate Fuels Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent.

SUMMARY: On October 19, 2010, the Forest Service published a notice of intent to prepare an environmental impact statement for the Tollgate Fuels Reduction Project in the **Federal Register**. The project is located within the Upper 204/Tollgate Wildland Urban Interface as identified in the Umatilla County Community Wildfire Protection Plan (CWPP), as amended. The project planning area encompasses approximately 46,000 acres and is situated approximately 40 miles south/southwest of Walla Walla, Washington. The project has been planned and will be implemented using the authorities of the Healthy Forest Restoration Act (HFRA) of 2004.

After the initial request for public comment on the Tollgate proposal subsequent analysis identified two additional actions that needed to be incorporated into the Tollgate Fuels Reduction Project:

• Amend the Umatilla National Forest Land and Resource Management Plan (Forest Plan): There is need to prepare a site specific amendment to the Umatilla National Forest Land and Resource Management Plan (Forest Plan). The proposed amendment will focus on the entry and treatment of fuels within select Riparian Habitat Conservation Areas (RHCAs). RHCA treatment is only proposed for the following units of the Tollgate Fuels Reduction Project- units 38, 75, 19, 66, and 61. These units were included on the map which accompanied the original scoping of this project, but we were not aware of the need for a Forest Plan Amendment until we had spent more time on the ground in these units. The proposed action does not propose any additional treatments within any RHCAs not contained in units listed above. All other RHCA will have the appropriate PACFISH buffers applied.

• Realignment of Forest Road 3718155: During subsequent review of public comments and associated road use needs to accomplish the fuels reduction objectives, it was determined that a realignment of a 0.35 mile segment of FR 3718155 would be required. Approximately 0.35 miles of FR is inside the RHCA of a perennial non-fishbearing stream and has a native surface (soil). The road is adjacent to a spring and the roadbed is saturated for much of the year in that location. As part of the Tollgate proposed action, this segment of road would be moved to an upland site which occurs outside of the RHCA. The existing segment of road would be decommissioned and rehabilitated. These actions would occur prior to the implementation of fuels reduction activities within the area. FR 3718155 is listed as a closed road by the Walla Walla RD Access and Travel Management Plan. This realignment activity would not change its Access and Travel Management status. Following the completion of fuels reduction activities, FR 3718155 will be gated and will retain its current status as a closed road.

The Forest Service is inviting interested members of the public to comment on the abovementioned additions to the Tollgate Fuels Reduction Project.

DATES: Comments concerning the scope of the analysis must be received by October 6, 2011. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available to the public for review by February 2012. The Final EIS is scheduled to be completed by July 2012.

ADDRESSES: Send written comments to Kevin Martin, Forest Supervisor, c/o Michael Rassbach, District Ranger, Walla Walla Ranger District, Umatilla National Forest,1415 W. Rose, Walla Walla, WA. Comments may also be sent via e-mail to *comments-pacificnorthwest-umatilla @fs.fed.us.*, or via facsimile to 509–522–6000.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative objection process or judicial review.

FOR FURTHER INFORMATION CONTACT: Kimpton Cooper, Environmental Coordinator, Walla Walla Ranger District, 1415 W. Rose, Walla Walla, WA 99362. He can be reached by phone at (509) 522–6290 or by e-mail at *kmcooper@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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Tollgate planning area is situated on a high plateau between the North Fork Umatilla Wilderness and the South Fork Walla Walla River. The Tollgate plateau is surrounded on all sides by very steep and deep canyons. The plateau area falls primarily into fire regime 4, based on species composition, and suggests the occurrence of mixed to high severity fire events with long return intervals. Private lands and in-holdings are adjacent to, and interspersed with National Forest System lands.

The Tollgate WUI is comprised of approximately 368 residences, 43 privately owned cabins under NFS special use permit, 4 NFS campgrounds, 6 trailheads, 1 ski area, 4 snowparks and other FS facilities. The area is one of the heaviest used recreation areas on the entire Umatilla NF. In addition, there are numerous non-recreation uses of the area. Important local and regional infrastrature (fiber optic lines, telephone lines, power transmission lines, and communication equipment) is interspersed throughout the WUI. Oregon State Highway 204 bisects the Tollgate community and provides a major transportation route, linking it to Elgin, OR in the south, and Milton-Freewater/Pendleton, OR in the north. Highway 204 also provides an important commercial shipping route that facilitates the flow of goods and services between Union and Umatilla counties.

Tollgate's geographic positioning, relative to large tracts of remote and

inaccessible roadless and wilderness areas, makes for a uniquely positioned community, and is an important contributing factor to the area's overall need for treatment. In many cases, wilderness and roadless areas occur at higher elevations and are well removed, from communities. Tollgate however sits above large tracts of both roadless and wilderness areas. Wildfires can initiate in these remote places, gain intensity, and ultimately emerge onto the plateau.

An accounting of the condition of existing vegetation within the analysis area has shown that these stands are very receptive to the initiation of high severity crown fire. The stands are also likely to sustain high severity crown fire that may emerge from the surrounding wilderness and roadless areas. Field reconnaissance of each prospective unit was performed, and showed that the structure, composition, arrangement, and dynamics of the present vegetation indicate an area highly susceptible to experiencing severe fire events.

A strong need for treatment exists. A community, important infrastructure and a major transportation cooridor representvaluesthat are at risk. The area's infrastructure is located above, and in the path of major fire travel routes. The community is situated amongst vegetation that is poised to burn with severity.

It is unlikely that high severity fire events can be stopped from occurring in fire regime 4; however, through the implementation of fuels reduction treatments property, infrastructure, and lives may be more effectively protected. Treatments resulting in modified fuel configurations in strategic locations can lessen the impacts of a major fire event to the people, infrastructure, and travel routes within Tollgate.

The following project objectives were identified based on the intent of the 2004 Healthy Forest Restoration Act, the Umatilla County CWPP, and goals brought forth through public collaborative efforts:

- Lower fire hazard, by reducing overall fuel load and reducing the vertical and horizontal continuity of fuels within the project planning area.
- Improve protection to adjacent private lands and public/private infrastructure from a wildfire event.
- Provide safe egress of local residents and safe ingress/egress for firefighters during wildfire events.
- Effect immediate change in fire behavior within the Tollgate WUI by reducing fuels and creating strategic fuel breaks.
- Prepare a site specific Forest Plan amendment to allow entry and treatment of fuels within select Riparian Habitat Conservation Areas (RHCAs). RHCA treatment is only proposed for the following units of the Tollgate Fuels Reduction Project—units 38, 75, 19, 66, and 61.

Proposed Action

The Forest Service proposes to conduct fuels reduction activities on approximately 4,400 acres within the Tollgate project planning area. Fuel reduction efforts would be implemented through the use of commerical timber harvest (3,050 acres) and non-commercial thinning (1,350 acres). Fuel reduction prescriptions include crown reduction, dead and down material removal, and ladder fuel reduction.

The project also includes fuel reduction activities in three (3) Riparian Habitat Conservation Areas (RHCAs) of strategic importance. There are treatments proposed along Oregon State Highway 204, designed to improve the defensibility of this important travel cooridor. Treatments are also proposed within the Lookingglass Inventoried Roadless Area (IRA). The proposed treatments are targeted on the edge of IRA boundary where it coincides with private inholdings and Forest Road 6400. No actions are proposed within either the North Fork Umatilla Wilderness or Walla Walla River Inventoried Roadless Area.

The project will realign approximately 0.35 miles of Forest Road 3718155 out of the RHCA of a fish-bearing stream to an upland site.

Responsible Official

Forest Supervisor, Kevin Martin.

Nature of Decision To Be Made

The responsible official will decide:

(1) Whether fuels reduction activities should occur, and if so, how much, when and where.

(2) What monitoring and mitigation measures should be taken or are needed.

(3) Whether or not to amend the Umatilla National Forest Land and Resource Management Plan.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

It should be noted that HFRA set up a pre-decisional objection process. Individual wishing to have standing to participate in the objection process must submit written comments either at this time (public scoping) or during the comment period for the Draft EIS.

Dated: August 23, 2011.

Kevin D. Martin,

Forest Supervisor.

[FR Doc. 2011–21971 Filed 9–2–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing and planning meeting of the Connecticut Advisory Committee to the Commission will be held at the Legislative Building, Hearing Group Room 2C, 210 Capitol Avenue, Hartford, CT, 06106, and will convene at 9 a.m. on Tuesday, September 20, 2011. The purpose of the briefing meeting is to discuss police practices and the changing demographics in Connecticut. The purpose of the planning meeting is to plan future activities.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Thursday, October 20, 2011. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 9th Street, NW., Suite 740, Washington, DC 20425, fax to (202) 376–7548, or e-mail to ero@usccr.gov. Persons wishing to present their comments verbally at the meeting, should contact Ivy Davis, Director, Eastern Regional Office at (202) 376–7533 (or for the hearing impaired at TDD 800–877–8339).

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site,

http://www.usccr.gov, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 31, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–22667 Filed 9–2–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Intent To Rescind Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Toyo Ink Mfg. America, LLC and Toyo Ink Mfg. Co., Ltd. (collectively, Toyo), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC). This administrative review covers only Toyo. The period of review (POR) is December 1, 2009, through November 30, 2010.

Toyo subsequently provided a certification of no sales. As the Department's review of U.S. Customs and Border Protection (CBP) import data confirms that there were no reviewable entries of the subject merchandise during the POR, we preliminarily determine that Toyo did not have reviewable entries during the POR. Therefore, because there are no entries on which to assess duties, the Department preliminarily determines to rescind this review. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2004, the Department published the antidumping duty order on CVP 23 from the PRC. *See Antidumping Duty Order: Carbazole Violet Pigment 23 From the People's Republic of China,* 69 FR 77987 (December 29, 2004) (the Order). On December 1, 2010, the Department published a notice of opportunity to request an administrative review of the Order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 74682 (December 1, 2010). On January 3, 2011, the Department received a timely request for administrative review from Toyo. Toyo referenced the formal scope inquiry regarding CVP 23 which the Department was conducting at the time, stating that it would withdraw its request if the Department were to find in the scope proceeding that crude CVP 23 from the PRC finished in Japan did not fall within the scope of the Order. *See* letter from Mark E. Pardo to the Secretary of Commerce entitled ''Request for Administrative Review: Carbazole Violet 23 Pigment from the People's Republic of China (POR: 12/1/2009–11/30/2010)'' dated January 3, 2011. *See also* memorandum from Deborah Scott to the file entitled, ''Memorandum Placing the Preliminary Affirmative Scope Ruling on Carbazole Violet Pigment 23 from The People's Republic of China and India on the Record,'' dated August 9, 2011.

On January 28, 2011, the Department initiated an administrative review of the Order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011).

Also on January 28, 2011, the Department requested that Toyo demonstrate that CBP had suspended at least one Toyo entry of CVP 23 finished in Japan from crude CVP 23 made in the PRC. *See* the Department's letter to Toyo, dated January 28, 2011.

On February 7, 2011, Toyo responded that some of its POR entries of CVP 23 remained unliquidated, but not necessarily suspended, under 19 U.S.C. 1404(a) and (b). In addition, Toyo maintained that these entries would not be affected by the Department's scope inquiry. Toyo also argued that, pursuant to 19 CFR 351.225(l), antidumping duties cannot be assessed on its entries unless suspension of liquidation has already been ordered on those entries. *See* letter from Toyo to the Secretary of Commerce entitled ''Administrative Review of the Antidumping Order on Carbazole Violet 23 Pigment from the People's Republic of China; Response of Toyo Ink Mfg. Co., Ltd. To Questionnaire of January 28, 2011'' dated February 7, 2011.

The Department conducted a CBP data query which confirmed that there were no reviewable entries of the subject merchandise during the period covered by this administrative review.

On March 24, 2011, Toyo timely submitted a notice of no sales.[1] *See* letter from Toyo to the Secretary of Commerce entitled ''Administrative Review of the Antidumping Order on Carbazole Violet 23 Pigment from the People's Republic of China; Toyo Ink Mfg. Co., Ltd.'' dated March 24, 2011.

Scope of the Order

The merchandise covered by this order is carbazole violet pigment 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2-b:3',2'-m] triphenodioxazine, 8,18-dichloro-5, 15-diethy-5,15-dihydro-, and molecular formula of C 34 H 22 C l2 N 4 O 2.[2] The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (e.g., pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of this order. The merchandise subject to this order is classifiable under subheading 3204.17.9040 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 scope of the order is dispositive.

Preliminary Intent To Rescind the Administrative Review

Under 19 CFR 351.213(d)(3), ''{t}he Secretary may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.'' *See* 19 CFR 351.213(d)(3).

On March 24, 2011, after having first reported unliquidated (but not necessarily suspended) entries during the POR, Toyo timely claimed that it made no sales of subject merchandise during the POR. *See* letter from Toyo to the Secretary of Commerce entitled

[1] Toyo clarified that, by its claim of ''no sales,'' it claimed to have made no *subject* sales.

[2] The brackets do not indicate ''business proprietary information'' but rather are part of the chemical formula.

''Administrative Review of the Antidumping Order on Carbazole Violet 23 Pigment from the People's Republic of China; Toyo Ink Mfg. Co., Ltd.'' dated March 24, 2011; *see also* letter from Toyo to the Secretary of Commerce entitled ''Administrative Review of the Antidumping Order on Carbazole Violet 23 Pigment from the People's Republic of China; Response of Toyo Ink Mfg. Co., Ltd. To Questionnaire of January 28, 2011'' dated February 7, 2011.

The Department's CBP data query confirmed, and we preliminarily conclude, that there were no reviewable entries of the subject merchandise during the period covered by this administrative review. We received no other requests for review of the Order for this POR. Therefore, in accordance with 19 CFR 351.213(d)(3), we preliminarily determine to rescind this review.

Comments

Interested parties are invited to comment on these preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings 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. Additionally, parties are requested to provide their case and rebuttal briefs in electronic format (preferably in Microsoft Word).

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs, not later than 120 days after these preliminary results are issued, unless the final results are extended. *See* 19 CFR 351.213(h).

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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: August 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–22744 Filed 9–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of the Seventeenth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting the seventeenth administrative review of the antidumping order on corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea [1] (Korea). This review covers eight manufacturers and/or exporters (collectively, the respondents) of the subject merchandise: LG Chem., Ltd. (LG Chem); Haewon MSC Co. Ltd. (Haewon); Dongbu Steel Co., Ltd., (Dongbu); Hyundai HYSCO (HYSCO); Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, POSCO); Dongkuk Industries Co., Ltd. (Dongkuk); LG Hausys, Ltd. (Hausys); and Union Steel Manufacturing Co., Ltd. (Union). The period of review (POR) is August 1, 2009, through July 31, 2010. We preliminarily determine that Union and Dongbu made sales of subject merchandise at less than normal value (NV). We preliminarily determine that HYSCO and POSCO have not made sales below NV.

In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a margin for those companies that were not selected for individual review. 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.

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Victoria Cho (POSCO), Dennis McClure (Union), Christopher Hargett (HYSCO) or Cindy Robinson (Dongbu), 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) 482–5075, (202) 482–5973, (202) 482–4161 and (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published the antidumping order on CORE from Korea. *See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 58 FR 44159 (August 19, 1993) (*Orders on Certain Steel from Korea*). On August 2, 2010, we published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 45094 (August 2, 2010). On August 30, and 31, 2010, respondents and petitioners [2] requested a review of Dongbu, HYSCO, POSCO, Union, Dongkuk, Haewon, Hausys, and LG Chem. The Department initiated a review of each of the companies for which a review was requested. *See Initiation Notice,* 75 FR 60076, 60077.

On October 29, 2010, the Department selected Dongbu, POSCO, HYSCO and Union as mandatory respondents in this review. *See* Memorandum from Dennis McClure, International Trade Compliance Analyst, through James

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 60076, 60077 (September 29, 2010) (*Initiation Notice*).

[2] Petitioners are the United States Steel Corporation (U.S. Steel), Nucor Corporation (Nucor), and Mittal Steel USA ISG, Inc. (Mittal Steel USA).

Terpstra, Program Manager, to Melissa Skinner, Director, Office 3, entitled ''17th Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of Respondents for Individual Review,'' dated October 29, 2010.

During the most recently completed segments of the proceeding in which HYSCO, Dongbu, POSCO and Union participated,[3] the Department disregarded sales below the cost of production (COP) for each of these companies. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP. We instructed HYSCO, Dongbu, POSCO and Union to respond to sections A through E of the initial questionnaire,[4] which we issued on October 29, 2010.

HYSCO

On December 20, 2010, HYSCO submitted its section A response to the Department's initial questionnaire. On January 18, 2011, HYSCO submitted its sections B through D response to the Department's initial questionnaire. HYSCO submitted its response to the Department's supplemental questionnaires for sections A through D on May 22, 2011, sections A through C and July 20, 2011, and August 3, 2011.

Union

On January 20, 2011, Union submitted its section A response to the initial questionnaire. On January 25, 2011, Union submitted its response to sections B through D of the Department's questionnaire. On April 21, 2011, and July 14, 2011, Union submitted its responses to the Department's supplemental questionnaires for sections A through C. On June 6, 2011, and July 21, 2011, Union submitted its response to the Department's supplemental questionnaire for section D.

POSCO

On December 20, 2010 and January 5, 2011, POSCO submitted its sections A through D response to the Department's initial questionnaire. On May 4, 2011 and August 3, 2011, POSCO submitted its response to the Department's supplemental questionnaires for sections A through C, respectively. On April 1, 2011, POSCO submitted its response to the Department's supplemental questionnaire for section D.

Dongbu

On December 20, 2010, and January 14, 2011, Dongbu submitted its section A and sections B through D responses to the Department's initial questionnaire. On February 22, 2011, Dongbu submitted its response to the Department's section D supplemental questionnaire. Dongbu submitted its response to the Department's first and second supplemental questionnaires for sections A through C on April 27, 2011, and July 12, 2011, respectively. On March 21, 2011, Dongbu submitted a reconciliation of its home market and U.S. sales databases.

Period of Review

The POR covered by this review is August 1, 2009, through July 31, 2010.

Scope of the Order

This order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (*i.e.,* products which have been ''worked after rolling''). Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Notice of Intent To Revoke Order, In Part

On August 31, 2010, the POSCO Group requested revocation of the order on CORE from Korea as it pertains to its sales.

Under section 751(d)(1) of the Act, the Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth at 19 CFR 351.222. Under 19 CFR 351.222(b)(2), the Department may revoke an antidumping duty order in part if it concludes that (A) an exporter or producer has sold the merchandise at

[3] *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review,* 76 FR 15291 (March 21, 2011) (*CORE 16 Final Results*); *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review,* 75 FR 13490 (March 22, 2010) (*CORE 15 Final Results*); *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission,* 74 FR 11082 (March 16, 2009) (*CORE 14 Final Results*).

[4] Section A: Organization, Accounting Practices, Markets and Merchandise; Section B: Comparison Market Sales; Section C: Sales to the United States; Section D: Cost of Production and Constructed Value; Section E: Further Manufacturing.

not less than normal value for a period of at least three consecutive years, (B) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value, and (C) the continued application of the antidumping duty order is no longer necessary to offset dumping. Section 351.222(b)(3) of the Department's regulations states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under 19 CFR 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

A request for revocation of an order in part for a company previously found dumping must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the agreement to reinstatement in the order if the Department concludes that, subsequent to revocation, the company has sold the subject merchandise at less than normal value. *See* 19 CFR 351.222(e)(1). We preliminarily determine that the request dated August 31, 2010, from the POSCO Group meets all of the criteria under 19 CFR 351.222(e)(1).

With regard to the criteria of 19 CFR 351.222(b)(2), our preliminary margin calculations show that the POSCO Group sold CORE at not less than normal value during the current review period. *See* ''Preliminary Results of Reviews'' section below. In addition, it sold CORE at not less than normal value in the two previous administrative reviews in which it was reviewed. *See CORE 15 Final Results* and *also see CORE 16 Final Results.* Based on our examination of the sales data submitted by the POSCO Group, we preliminarily determine that the POSCO Group sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by the POSCO Group to support its request for revocation. *See* the POSCO Group's August 31, 2011, Calculation Memorandum (the POSCO Group's Calc Memo). Thus, we preliminarily find that the POSCO Group had zero or *de minimis* dumping margins for the last three consecutive years and sold in commercial quantities all three years. Also, we preliminarily determine that application of the antidumping duty order to the POSCO Group is no longer warranted for the following reasons: (1) The company had zero or *de minimis* margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if we find that it has resumed making sales at less than fair value; (3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we preliminarily determine that the POSCO Group qualifies for revocation from the order on CORE from Korea pursuant to 19 CFR 351.222(b)(2) and, thus, we preliminarily determine to revoke the order with respect to CORE from Korea exported and/or sold to the United States by the POSCO Group. If our intent to revoke results in revocation of the order in part with respect to merchandise exported and/or sold by the POSCO Group, the proposed effective date of the revocation is August 1, 2010.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all CORE products produced by the respondents, covered by the scope of the order, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to CORE sold in the United States.

Where there were no sales in the ordinary course of trade of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the Appendix V physical characteristics reported by each respondent.

Normal Value Comparisons

To determine whether sales of CORE by the respondents to the United States were made at less than NV, we compared the Export Price (EP) or Constructed Export Price (CEP) to the NV, as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price/Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices and the applicable delivery terms to the first unaffiliated customer in, or for exportation to, the United States.

In accordance with section 772(a) of the Act, we calculated EP for a number of Union's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, and U.S. customs duty.

In accordance with section 772(b) of the Act, we calculated CEP where the record established that sales made by HYSCO, POSCO, Dongbu, and Union were made in the United States after importation. HYSCO's, POSCO's, Dongbu's and Union's respective affiliates in the United States (1) took title to the subject merchandise and (2) invoiced and received payment from the unaffiliated U.S. customers for their sales of the subject merchandise to those U.S. customers. Thus, where appropriate, the Department determined that these U.S. sales should be classified as CEP transactions under section 772(b) of the Act. Where appropriate, we made deductions from the starting price for foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the

warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, U.S. customs duty, credit expenses, warranty expenses, commissions, inventory carrying costs incurred in the United States, and other indirect selling expenses in the United States associated with economic activity in the United States. *See* sections 772(c)(2)(A) and 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price.

HYSCO's Entries of Subject Merchandise That Were Further Manufactured and Sold as Non-Subject Merchandise in the United States

In its section A questionnaire response, HYSCO requested that the Department excuse it from reporting information for certain POR sales of subject merchandise imported by its wholly owned U.S. subsidiary, HYSCO America Company (HAC), that were further manufactured after importation and sold as non-subject merchandise in the United States, claiming that determining CEP for sales through HAC would be unreasonably burdensome.

Section 772(e) of the Act provides that when the value added in the United States by an affiliated party is likely to exceed substantially the value of the subject merchandise, the Department shall use one of the following prices to determine CEP if there is a sufficient quantity of sales to provide a reasonable basis of comparison and the use of such sales is appropriate: (1) The price of identical subject merchandise sold by the exporter or producer to unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

The record evidence shows that the value added by the affiliated party to the subject merchandise after importation in the United States was significantly greater than the 65 percent threshold we use in determining whether the value added in the United States by an affiliated party substantially exceeds the value of the subject merchandise. *See* 19 CFR 351.402(c)(2). We then considered whether there were sales of identical subject merchandise or other subject merchandise sold in sufficient quantities by the exporter or producer to an unaffiliated person that could provide a reasonable basis of comparison. In addition to the sales to HAC that were further manufactured, HYSCO also had CEP sales of similar, but not identical, subject merchandise to unaffiliated customers in the United States in back-to-back transactions through another HYSCO affiliate in the United States, Hyundai HYSCO USA (HHU).

The appropriate methodology for determining the CEP for sales whose value has been substantially increased through U.S. further manufacturing generally must be made on a case-by-case basis. In this instance, we find that there is a reasonable quantity of sales of subject merchandise to unaffiliated parties for comparison purposes. *See* HYSCO Calc Memo. Furthermore, there is no other reasonable methodology for determining CEP for HAC's CEP sales. Therefore, we relied on HYSCO's other sales of similar merchandise to unaffiliated parties in the United States as the basis for calculating CEP for HYSCO's sales through HAC, which is consistent with the previous administrative reviews of CORE from Korea.[5]

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. We increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act.

Where appropriate, we deducted inland freight from the plant to distribution warehouse, warehouse expense, inland freight from the plant/warehouse to customer, and packing, pursuant to section 773(a)(6)(B) of the Act. Additionally, we made adjustments to NV, where appropriate, for credit and warranty expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Where appropriate, we added interest revenue and applied billing adjustments to the gross unit price.

We also made adjustments for Union, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other. Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less. *See* 19 CFR 351.410(e).

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. *See* 19 CFR 351.411 and section 773(a)(6)(C)(ii) of the Act.

Cost of Production

As stated above, in the most recently completed segments of the proceeding in which HYSCO, POSCO, Dongbu and Union participated, the Department found and disregarded sales that failed the cost test for each of these companies. Therefore, for this review, the Department has reasonable grounds to believe or suspect that sales of the foreign like products under consideration for the determination of NV may have been made at prices below the COP as provided by 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 HYSCO, POSCO, Dongbu and Union.

A. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for 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 HYSCO, POSCO, Union and Dongbu in their supplemental section D questionnaire responses for the COP calculation. For the purposes of calculating Union's general and

[5] *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Sixteenth Antidumping Duty Administrative Review,* 75 FR 55769 (September 14, 2010) (unchanged in *CORE 16 Final Results*); *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 74 FR 46110, 46112 (September 8, 2009) (unchanged in *CORE 15 Final Results*); *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 73 FR 52267, 52270 (September 9, 2008) (unchanged in *CORE 14 Final Results*).

administrative (G&A) expense ratio, we excluded an item of non-operating income. *See* Union Cost Calculation Memo at 3. For control numbers (CONNUMs) where there was no production during the POR and for which a surrogate CONNUM was not assigned by Union, we selected the next similar CONNUM, in accordance with our product characteristics outlined in Appendix V of the questionnaire.

For POSCO, we adjusted the total manufacturing costs to include the beginning inventory variance associated with the semi-finished goods that reentered production during the POR. *See* Memorandum from Heidi K. Schriefer, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Pohang Iron and Steel Co. Ltd. and Pohang Coated Steel Co., Ltd.,'' dated August 31, 2011 (''POSCO Cost Calculation Memo'')*.*

We calculated temper rolling cost adjustment factors for both temper rolled and non-temper rolled products and applied them to HYSCO's reported cost. Finally we recalculated HYSCO's financial expense ratio to be based on the combined financial statements of Hyundai Motor Corporation. *See* HYSCO Cost Calculation Memo.

Based on our review of the record evidence, neither Dongbu, HYSCO, POSCO, nor Union, appeared to experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

B. Test of Comparison Market Sales Prices

As required under section 773(b)(2) of the Act, we compared the quarterly or POR, as appropriate, weighted-average COP to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

C. Results of the 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.

Therefore, for HYSCO, POSCO, Union and Dongbu, we disregarded below-cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* HYSCO, POSCO, Union and Dongbu Cost Calculation Memos.

Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for HYSCO, POSCO, Union and Dongbu, we based NV on home market prices. In these preliminary results, we were able to match all U.S. sales to contemporaneous sales, made in the ordinary course of trade, of either an identical or a similar foreign like product, based on the matching characteristics identified in Appendix V of the original questionnaire. We calculated NV based on free on board (FOB) mill or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (*see* discussion below regarding these arm's-length sales). We made deductions, where appropriate, from the starting price for billing adjustments, discounts, rebates, and inland freight. Additionally, we added interest revenue. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses and other direct selling expenses, such as the expense related to bank charges and factoring. *Id.* We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Arm's-Length Sales

Dongbu, Union, HYSCO, and POSCO also reported that they made sales in the home market to affiliated parties. The Department calculates 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 price at which sales are made to parties not affiliated with the producer or exporter, *i.e.,* sales at arm's-length. *See* 19 CFR 351.403(c).

To test whether these sales were made at arm's length, we compared the reported home market prices of sales to affiliated and unaffiliated customers with applied billing adjustments, including interest revenue and net of all movement charges, direct selling expenses, discounts, rebates, and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 71 FR 45017, 45020 (August 8, 2006) (unchanged in *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 72 FR 7011 (February 14, 2007)); 19 CFR 351.403(c). 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 NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69187 (November 15, 2002); *also see* Dongbu, HYSCO, the POSCO Group, and Union's August 31, 2011, preliminary results calculation memorandums.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP sales, to the extent possible. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to 19 CFR 351.412, to determine whether EP or CEP sales and NV sales were at different LOTs, we

examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and the data available do not provide an appropriate basis to determine an LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

We did not make an LOT adjustment under 19 CFR 351.412(e) because there was only one home market LOT for each respondent and we were unable to identify a pattern of consistent price differences attributable to differences in LOTs. *See* 19 CFR 351.412(d). Under section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset for HYSCO, POSCO, Dongbu, and Union because the NV sales for each company are at a more advanced LOT than the LOT for the U.S. CEP sales.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* Dongbu, HYSCO, and Union's August 31, 2011, preliminary results calculation memorandums.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily find that the following weighted-average dumping margins exist:

Manufacturer/exporter	Percent margin
HYSCO	0.25% (*de minimis*).
POSCO	0.04% (*de minimis*).
Union	3.61%.
Dongbu	4.92%.
Review-Specific Average Rate Applicable to the Following Companies:[6] LG Chem, Haewon, Hausys, and Dongkuk.	4.27%.

Comment

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rate

Upon completion of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific assessment rates for each respondent based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its ''automatic assessment''' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (Automatic Assessment). This clarification will apply to entries of subject merchandise during the POR produced by the respondents subject to this review for which the reviewed companies did not know that the merchandise which it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the

[6] This rate is based on the margins calculated for those companies that were selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available.

intermediary involved in the transaction. For a full discussion of this clarification, *see* Automatic Assessment.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CORE from Korea 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 rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 17.70 percent, the all-others rate established in the LTFV. *See Orders on Certain Steel from Korea.* These cash deposit requirements, when imposed, 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 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 of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–22730 Filed 9–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–22A12]

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review to Northwest Fruit Exporters, Application no. 84–22A12.

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Northwest Fruit Exporters on August 12, 2011. The Certificate has been amended twenty two times. The previous amendment was issued on August 18, 2010 (75 FR 51980). The original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984).

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail 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. The regulations implementing Title III are found at 15 CFR part 325 (2010). The U.S. Department of Commerce, International Trade Administration, Office of Competition and Economic Analysis (''OCEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the **Federal Register**. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

NWF's Export Trade Certificate of Review has been amended to:

1. Add the following companies as a new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Frosty Packing Co. LLC (Yakima, WA), J & D Packing LLC (Outlook, WA), and Polehn Farm's Inc. (The Dalles, OR); and

2. Remove the following companies as a Member of NWF's Certificate: Cervantes Orchards & Vineyards LLC (Grandview, WA), Chief Orchards LLC (Yakima, WA), Dovex Fruit Co. (Wenatchee, WA), and Jack Frost Fruit Co. (Yakima, WA); and

3. Change the name of the following member: Conrad and Gilbert Fruit of Grandview, WA is now Conrad & Adams Fruit LLC.

The effective date of the amended certificate is April 29, 2011, the date on which NWF's application to amend was deemed submitted. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: August 30, 2011.

Joseph E. Flynn,

Office Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–22708 Filed 9–2–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 11–00001]

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review to the Latin American Multichannel Advertising Council (''LAMAC'') (#11–00001).

SUMMARY: On August 18, 2011, the U.S. Department of Commerce issued an Export Trade Certificate of Review to the Latin American Multichannel Advertising Council (''LAMAC''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2010). The U.S. Department of Commerce, International Trade Administration, Office of Competition and Economic Analysis (''OCEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the **Federal Register**. Under Section 305(a) of the Export Trading

Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

LAMAC is certified to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

1. Collect and disseminate among LAMAC Members information, including research and analysis, relating to the Export Markets; in particular, LAMAC may share among its Members the following types of information of aggregation and with or without attribution:

• Market research conducted by individual members, including but not limited to research on trends, consumer groups, audience groups, purchase profiles of audience and consumer groups, audience shares, broadcast media, and similar information; and

• Discussions with foreign regulatory agencies.

2. LAMAC may share among its Members the following types of information only when aggregated so that no Member-specific transaction or information may be inferred: Member data relating to advertising revenues; advertisers; payments to broadcast providers or subscription fee/revenues; and Member advertising rates per time block as defined below:

a. Morning: 6 a.m.–12 noon
b. Afternoon: 12 noon–4 p.m.
c. Late fringe: 4–6 p.m.
d. Prime Time: 6 p.m.–12 midnight
e. Overnight: 12 midnight–6 a.m.

3. Negotiate and enter into agreements with audience data providers, advertising agencies, and advertisers, for services relating to the Export Markets, with a view of expanding its Members' Export Trade in the Export Markets;

4. Develop and recommend to its Members common business models to reduce foreign trade barriers and expand markets;

5. Provide accounting, tax, legal, and consulting assistance and services to its Members; and

6. Engage in joint promotional activities aimed at developing Export Trade in the Export Markets on behalf of Members.

Terms and Conditions

In engaging in Export Trade Activities and Methods of Operation,

1. LAMAC will not intentionally disclose, directly or indirectly, to any Member any information about any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. With respect to information that LAMAC distributes to its Members pursuant to Export Trade Activity and method of Operation 2 above:

a. LAMAC will utilize an independent third party to collect the information from its Members; and

b. LAMAC will distribute the aggregated information to its Members only when the aggregation consist of the information from at least four Members.

3. LAMAC will comply with requests made by the Secretary of Commerce on behalf of the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General of the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

The members of the Certificate are:

1. Discovery Latin America, LLC.
2. Fox Latin American Channel, Inc.
3. NGC Networks Latin America, LLC.
4. Turner Broadcasting System Latin America, Inc.
5. A&E Mundo, LLC.
6. History Channel Latin America, LLC.
7. E! Entertainment Television Latin America Partners. L.P.

Dated: August 30, 2011.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–22713 Filed 9–2–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2011, the Department of Commerce (the Department) published in the **Federal Register** the initiation of administrative review of the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China, covering the period December 1, 2009, to November 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011). The current deadline for the preliminary results of this review is September 2, 2011.

Scope of the Order

The merchandise subject to this antidumping duty order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof. A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or

more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of the United States (HTSUS), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular materials measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

Extension of Time Limits for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department finds that it is not practicable to complete the preliminary results of this review within the original time frame because comments from interested parties have necessitated the solicitation and subsequent analysis of additional information from the respondent, New-Tec Integration (Xiamen) Co., Ltd. This additional information covers a wide range of issues and is extensive. The Department requires additional time to gather and analyze the additional information. Thus, the Department finds it is not practicable to complete this review within the original time limit (*i.e.,* September 2, 2011). Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review by 120 days (*i.e.,* until January 3, 2012),[1] in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: August 30, 2011.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–22714 Filed 9–2–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] The current deadline for the preliminary results of this review is December 31, 2011. As this date falls on Saturday, a non-business day, the preliminary results are due January 3, 2012. *See* Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended, 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–974]

Certain Steel Wheels From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain steel wheels (steel wheels) from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: John Conniff (for the Centurion Companies) at 202–482–1009, Robert Copyak (for the Jingu Companies) at 202–482–2209, and Kristen Johnson (for the Xingmin Companies) at 202–482–4793, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

On March 30, 2011, the Department received a countervailing duty (CVD) petition concerning imports of steel wheels from the PRC filed in proper form by Accuride Corporation (Accuride) and Hayes Lemmerz International, Inc. (collectively, petitioners).[1] This investigation was initiated on April 19, 2011. *See Certain Steel Wheels From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 76 FR 23302 (April 26, 2011) (*Initiation Notice*), and accompanying Initiation Checklist.

In the *Initiation Notice,* the Department stated that it intended to rely on data from U.S. Customs and Border Patrol (CBP) for purposes of selecting the mandatory respondents. *See Initiation Notice,* 76 FR at 23304. On April 20, 2011, the Department released the results of a query performed on the CBP's database for calendar year 2010. *See* Memorandum to the File from Robert Copyak, Senior Financial Analyst, AD/CVD Operations, Office 3, regarding ''Release of Query Results of Customs and Border Patrol Database'' (April 20, 2011). Due to the large number of producers and exporters of steel wheels in the PRC, we determined that it was not practicable to individually investigate each producer and/or exporter. We, therefore, selected the following three producers and/or exporters of steel wheels to be mandatory respondents: Jiangsu Yuantong Auto Parts Co., Ltd. (Yuantong), Zhejiang Jinfei Machinery Group Co. Ltd. (Zhejiang Jinfei), and Zhejiang Jingu Automobile Components (Zhejiang Jingu),[2] the largest publicly identifiable producers and/or exporters of the subject merchandise.[3] *See*

[1] *See* Petition for the Imposition of Countervailing Duties (Petition). A public version of the Petition and all other public documents and public versions for this investigation are available on the public file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

[2] We use the term Jingu Companies to refer collectively to Zhejiang Jingu and its cross-owned affiliates under examination in this investigation.

[3] The companies are listed in alphabetical order and not listed based on export value/volume.

Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, and Robert Copyak, Senior Financial Analyst, AD/CVD Operations, Office 3, through Melissa G. Skinner, Director, AD/CVD Operations, Office 3, ''Respondent Selection'' (May 10, 2011). On May 13, 2011, we issued the initial CVD questionnaire to the Government of the People's Republic of China (the GOC) and selected mandatory respondents. We also issued a confirmation of shipment questionnaire on the same date to Yuantong and Zhejiang Jinfei.

On May 20, 2011, the Department received Yuantong's and Zhejiang Jinfei's response to the shipment questionnaire in which each company certified that it did not export subject merchandise to the United States during the period of investigation (POI). *See* Yuantong's and Zhejiang Jinfei's Shipment Questionnaire Response (May 20, 2011).

On May 25, 2011, the Department selected two other producers and/or exporters to be mandatory respondents in this investigation: Jining Centurion Wheel Manufacturing Co., Ltd. (Centurion) [4] and Shandong Xingmin Wheel Co., Ltd. (Xingmin).[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, and Robert Copyak, Senior Financial Analyst, AD/CVD Operations, Office 3, through Melissa G. Skinner, Director, AD/CVD Operations, Office 3, ''Selection of Mandatory Respondents, Round Two'' (May 25, 2011). The Department provided copies of the initial questionnaire to the Centurion and Xingmin Companies on May 13, 2011, because they were on the public service list at the time the Department issued the initial questionnaire.[6] The Department re-issued the questionnaire to the Centurion and Xingmin companies on May 25, 2011.

On June 8, 2011, the Department postponed the deadline for the preliminary determination by 65 days to no later than August 29, 2011. *See Certain Steel Wheels From the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 76 FR 33242 (June 8, 2011).

On June 20, 2011, Xiamen Sunrise Wheel Group Co., Ltd. (Sunrise), a Chinese producer of subject merchandise, submitted to the Department a response to the initial CVD questionnaire and requested that the Department designate it as a voluntary respondent. Because we previously determined that we only had the resources to investigate three companies, and because the Department received complete questionnaire responses from the three selected mandatory respondents, as discussed below, we did not designate Sunrise as a voluntary respondent in this investigation.

The Department received the GOC's initial questionnaire response on July 5, 2011. The Department issued supplemental questionnaires to the GOC on July 25, 2011 (first), August 2, 2011 (second), and August 3, 2011 (third), and received the GOC's response to the first and second supplemental questionnaires on August 10, 2011. The GOC's response to the third supplemental questionnaire is due on September 9, 2011.

The Department received the Jingu Companies' initial questionnaire response on July 5, 2011. On July 14, 2011, the Department issued a supplemental questionnaire to the Jingu Companies. On July 18, 2011, the Department issued an addendum to the supplemental questionnaire in which it instructed the Jingu Companies to supply responses to the initial questionnaire with regard to two additional cross-owned companies. The Department issued an additional supplemental questionnaire on August 2, 2011. The Jingu Companies submitted their supplemental questionnaire responses on July 29, August 5, and August 10, 2011.

The Department received the initial questionnaire responses from the Centurion Companies on July 15, 2011. On July 21, 2011, the Department issued a supplemental questionnaire to the Centurion Companies in which it instructed the companies to supply a response to the initial questionnaire response with regard to an additional cross-owned company. The Centurion Companies submitted their response to the supplemental questionnaire on August 8, 2011.

On July 15, 2011, the Department received the Xingmin Companies' initial questionnaire response and issued to the Xingmin Companies a supplemental questionnaire on July 21, 2011. On July 25, 2011, the Department issued two addenda to the Xingmin Companies' July 21, 2011, supplemental questionnaire. We received the Xingmin Companies' supplemental questionnaire responses on August 10 and 12, 2011.

On August 29, 2011, we placed on the record of this investigation our analysis of entry documentation obtained from CBP for the products that Yuantong and Zhejiang Jinfei exported to the United States during the POI.[7] Based on our analysis of the entry packages, we find that the documentation supports the claims of non-shipment of subject merchandise to the United States during the POI by Yuantong and Zhejiang Jinfei.

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2010 through December 31, 2010, which corresponds to the most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Scope of the Investigation

The products covered by this investigation are steel wheels with a wheel diameter of 18 to 24.5 inches. Rims and discs for such wheels are included, whether imported as an assembly or separately. These products are used with both tubed and tubeless tires. Steel wheels, whether or not attached to tires or axles, are included. However, if the steel wheels are imported as an assembly attached to tires or axles, the tire or axle is not covered by the scope. The scope includes steel wheels, discs, and rims of carbon and/or alloy composition and clad wheels, discs, and rims when carbon or alloy steel represents more than fifty percent of the product by weight. The scope includes wheels, rims, and discs, whether coated or uncoated, regardless of the type of coating.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 8708.70.05.00, 8708.70.25.00, 8708.70.45.30, and 8708.70.60.30. These HTSUS numbers are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Scope Comments

In accordance with the *Preamble* to the Department's regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19,

[4] We use the term Centurion Companies to refer collectively to Centurion and its cross-owned affiliates under examination in this investigation.

[5] We use the term Xingmin Companies to refer collectively to Xingmin and its cross-owned affiliates under examination in this investigation.

[6] *See* section 782(a) of the Tariff Act of 1930, as amended (the Act). *See also* Centurion's April 29, 2011 submission, and Xingmin's May 4, 2011, submission.

[7] *See* Memorandum to the File from John Conniff, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Examination of Entry Documentation,'' (August 29, 2011).

1997)), in the *Initiation Notice,* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* On May 9, 2011, we received scope comments from Blackstone/OTR LLC and OTR Wheel Engineering, Inc. (collectively, OTR), a U.S. importer of the subject merchandise. On June 7, 2011, the Department released a memorandum to the file regarding additional HTSUS categories and language to include in the scope of the AD and CVD investigations as suggested by a National Import Specialist at CBP. *See* Memorandum to the File from Raquel Silva, International Trade Compliance Analyst, AD/CVD Operations, Office 8, through Erin Begnal, Program Manager, AD/CVD Operations, Office 8, regarding ''Suggested Additional Harmonized Tariff Schedule Categories'' (June 7, 2011) (HTSUS Memorandum).

On June 14, 2011, we received comments on the HTSUS Memorandum from petitioners who agree with the suggestion of the CBP import specialist to include the additional HTSUS numbers within the scope language.[8] Petitioners state that by including the additional HTSUS numbers for vehicles and machinery, they, however, do not intend to limit the coverage of the scope to steel wheels for just vehicles or machinery, but rather intend to include all steel wheels with a wheel diameter of 18 to 24.5 inches regardless of use.[9] Petitioners add, if the coverage of the scope was qualified based on use that could present customs classification problems as well as enable steel wheels of the sizes covered by the scope to evade coverage by being entered as wheels for machinery and then used as wheels for vehicles.[10] Therefore, they assert that adding use language to the scope, as suggested by the CBP import specialist, is inappropriate.[11]

On June 14 and 21, 2011, we received comments and rebuttal comments from the GOC on the HTSUS Memorandum. The GOC agrees with CBP's proposal to clarify the scope language to state that it is only intended to include steel wheels for vehicles.[12] The GOC, however, states that it would be inappropriate for the Department to include the HTSUS numbers covering steel wheels for manufacturing machines because those HTSUS numbers cover products beyond the subject merchandise.[13]

The Department is evaluating the comments submitted by the parties and will issue its decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation, which is due for signature on October 26, 2011.[14] Scope decisions made in the AD investigation will be incorporated into the scope of the CVD investigation.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On May 20, 2011, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China of certain steel wheels. *See Certain Steel Wheels From China,* Investigation Nos. 701–TA–478 and 731–TA–1182 (Preliminary), 76 FR 29265 (May 20, 2011).

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On April 19, 2011, the Department initiated the AD and CVD investigations of steel wheels from the PRC. *See Certain Steel Wheels From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 76 FR 23294 (April 26, 2011) and also *Initiation Notice* (for the PRC CVD investigation). The AD and CVD investigations have the same scope with regard to the merchandise covered.

On August 22, 2011, petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation of steel wheels from the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final determination in the companion AD investigation of steel wheels from the PRC. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on or about January 9, 2012.

Application of the CVD Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum). In *CFS from the PRC,* the Department found that

> given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.

See CFS from the PRC Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See, e.g., Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP from the PRC Decision Memorandum) at Comment 1.

Additionally, for the reasons stated in the CWP from the PRC 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 for purposes of this investigation. *See* CWP from the PRC 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

[8] *See* Petitioners' submission regarding ''Request to Add Harmonized Tariff Schedule Categories to Scope Definition'' (June 16, 2011). Also, when petitioners timely filed their comments to the Department on June 14, 2011, they inadvertently excluded the CVD case number. Therefore, petitioners filed a copy of their scope comments on the CVD record on June 16, 2011.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *See* GOC's submission regarding ''CBP Proposal for Additional Harmonized Tariff Schedule Categories'' (June 14, 2011).

[13] *Id.*

[14] *See Certain Steel Wheels From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 76 FR 50995 (August 17, 2011).

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.

GOC- Hot-Rolled Steel

In our initial questionnaire, we asked the GOC to provide information concerning the firms that produced the hot-rolled steel (HRS) that respondents purchased during the POI. *See* the Department's May 13, 2011, questionnaire at 17. We explained in our questionnaire that the Department normally treats producers that are majority owned by the government or a government entity as ''authorities.'' Thus, for any producer of HRS that was majority government-owned, the GOC needed to provide the requested information only if it wished to argue that those producers were not authorities.

For any producer that the GOC claimed was directly, 100-percent owned by individual persons during the POI, we requested, among other items, 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 and identification of the owners, members of the board of directors, or managers of the suppliers who were also government or Chinese Communist Party (CCP) officials during the POI. *See* the Department's May 13, 2011, questionnaire at Appendix 5.

For HRS producers with direct corporate ownership or less-than-majority state ownership during the POI, we requested that the GOC provide ownership information, including among other items, the total level (percentage) of state ownership of the companies' shares; the names of all government entities that own shares, either directly or indirectly, in the company; information on whether any of the owners are considered ''state-owned enterprises'' by the government; and the amount of shares held by each government owner. We also asked a series of questions regarding whether the owners of the input producers were members of the CCP and the extent to which CCP officials influenced the manner in which they conducted their firms' operations. *Id.*

In its questionnaire response, the GOC provided various source documents (*e.g.,* business licenses, capital verification reports, and articles of associations) for the firms that supplied HRS to the respondents during the POI. However, in most cases the GOC did not provide the information requested in the Department's initial questionnaire regarding the firms that produced the HRS that respondents purchased during the POI. Moreover, in all cases the GOC did not respond to the Department's questions concerning the CCP. *See* the GOC's July 15, 2011, questionnaire response at 17–29 and Exhibits 9–15.

In our supplemental questionnaire, we requested that the GOC provide the information requested in the initial questionnaire as it applied to HRS producers that respondents claimed were privately-held entities. *See* the Department's July 25, 2011, supplemental questionnaire at 10. The GOC failed to provide the requested information in its supplemental questionnaire response. For example, in spite of the GOC's claims in the supplemental questionnaire, the GOC continued not to provide ownership information for several of the respondents' HRS producers that the respondents identified as being private entities. Further, for purportedly privately-owned HRS producers owned by individuals, the GOC, in all instances, did not provide information regarding whether the owners of the input producers were officials of the CCP and the extent to which CCP officials influenced the manner in which they conducted their firms' operations. *See* the GOC's August 10, 2011, questionnaire response.

We, therefore, preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts available'' in making our preliminary determination. *See* sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. Therefore, in those instances in which the GOC failed to provide the requested ownership information, we are applying an adverse inference that the firms were government authorities that provided a financial contribution as described under section 771(5)(D)(iv) of the Act. In addition, for those instances in which the GOC provided the requested ownership documents (*e.g.,* capital verification reports, business registration forms, and articles of association) but failed to provide information on whether individual owners of the input producers were officials of the CCP and the extent to which CCP officials influenced the manner in which they conducted their firms' operations, we are assuming, adversely, that the firms were government authorities that provided a financial contribution. Our approach in this regard is consistent with the Department's practice. *See, e.g., Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 75 FR 10774, 10778 (March 9, 2010) (*Coated Paper from the PRC Preliminary Determination*); unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 59212 (September 27, 2010) (*Coated Paper from the PRC Final Determination*) and accompanying Issues and Decision Memorandum (Coated Paper from the PRC Decision Memorandum).

GOC—Electricity

The Department is also investigating the provision of electricity for LTAR to the respondents by the GOC. The GOC, however, did not provide a complete response to the Department's May 13, 2011, initial questionnaire regarding this program. In the questionnaire, the Department requested that the GOC provide the provincial price proposals for 2006 and 2008, for each province in which a mandatory respondent or any reported cross-owned company is located and to explain how electricity cost increases are reflected in retail price increases.[15] In its July 5, 2011, questionnaire response, the GOC responded that it was unable to provide provincial price proposals for 2006 and 2008, because they are working documents for the National Development and Reform Commission's (NDRC) review.[16] The GOC's response also explained theoretically how the national price increases should be formulated but did not explain the

[15] *See* Department's Initial Questionnaire Issued to the GOC (May 13, 2011) at Appendix 6.

[16] *See* GOC's Initial Questionnaire Response (July 5, 2011) at 62.

actual process that led to the price increases.[17]

As such, on August 2, 2011, the Department issued a supplemental questionnaire to the GOC reiterating its request for this information as well as information on the price adjustment in 2009, and the 2009 provincial price proposal for Zhejiang, Shandong, and Sichuan, the provinces in which the respondents are located.[18] The GOC, however, in its supplemental questionnaire response, did not provide the requested provincial price proposals asserting that the ''documents are not necessary to an understanding of the electricity pricing in China.'' [19] The GOC also did not provide sufficient answers to the Department's supplemental questions. For example, we asked the GOC to explain how the NDRC developed the national price increase. In response, the GOC simply provided a copy of the ''Interim Rules on Sales Price of Electricity,'' but failed to provide an explanation on how the NDRC developed the national price increase.[20] Similarly, we asked the GOC to explain the methodology used to calculate each of the cost element increases; however, in response, the GOC simply stated ''the methodology used to calculate each of these cost element increases are mainly common practices of costing.'' [21] We also asked the GOC to explain how all significant cost elements are accounted for within each province's price proposal. The GOC, however, stated that ''significant cost elements will normally be accounted for within the province's price proposal in a manner consistent with the relevant rules on costing and pricing of electricity'' [22] with no further explanation.

After reviewing the GOC's responses to the Department's electricity questions, we preliminarily determine that the GOC's answers were inadequate and did not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. As such, the Department must rely on the facts otherwise available in making our preliminary determination. *See* sections 776(a)(1), 776(a)(2)(A) and (B) 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 as it did not adequately explain why it was unable to provide the requested information. 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 find 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 also preliminarily rely 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* sections 776(b)(4) of the Act. The GOC reported that the provincial rate schedules of November 2009 were applicable during the POI.[23] As such, we have used the November 2009 provincial electricity tariff schedules as a benchmark rate source for the period January 2010 through December 2010. Specifically, we have placed on the record of this investigation the November 2009 provincial electricity rate schedules, which were submitted to the Department by the GOC in the CVD investigation on *Drill Pipe from the PRC,* and which reflect the highest rates that the respondents would have paid in the PRC during the POI. *See Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 1971 (January 11, 2011) (*Drill Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Drill Pipe from the PRC Decision Memorandum) at ''Provision of Electricity for LTAR.'' *See* Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Provincial Electricity Tariff Schedules,'' (August 29, 2011).

For details on the calculation of the subsidy rate for the respondents, *see* below at ''Provision of Electricity for LTAR.''

Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. No interested party has claimed that the AUL of 12 years is unreasonable.

Further, for non-recurring subsidies, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Attribution of Subsidies

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)–(v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) Two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject 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. *See Fabrique de Fer de Charleroi* v. *United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001) (*Fabrique*).

The Jingu Companies

Zhejiang Jingu, established in 1986, is a producer of subject merchandise.

[17] *Id.* at 61–66.

[18] *See* Department's Second Supplemental Questionnaire Issued to the GOC (August 2, 2011).

[19] *See* GOC's Second Supplemental Questionnaire Response (August 10, 2011) at 1, 5.

[20] *Id.* at 2.

[21] *Id.* at 5.

[22] *Id.*

[23] *Id.* at 6.

Currently, Zhejiang Jingu is a publicly traded, domestically-owned enterprise which is listed on the Shenzhen Stock Exchange. Chengdu Jingu Wheel Co., Ltd. (Chengdu) is a domestically and one-hundred percent owned subsidiary of Zhejiang Jingu. Chengdu produces subject merchandise for sale in the domestic market. During the POI, Zhejiang Jingu exported subject merchandise through Shanghai Yata Industrial Co., Ltd. (Shanghai Yata), a wholly-owned, PRC-based trading company that has no production operations. Zhejiang Jingu also shipped a relatively small quantity of subject merchandise through Zhejiang Wheel World Industrial Co., Ltd. (Zhejiang Wheel World) during the POI. Zhejiang Wheel World is a foreign-invested joint venture operation in which Zhejiang Jingu owned a 75 percent shareholding interest during the POI. The Jingu Companies state that Zhejiang Wheel World did not produce in-scope steel wheels during the POI.

In accordance with 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Zhejiang Jingu, Chengdu, Shanghai Yata, and Zhejiang Wheel World are cross-owned companies. Concerning Zhejiang Wheel World, we acknowledge that the Jingu Companies have stated that the firm did not produce in-scope steel wheels during the POI. However, the Court has found that the Department may examine subsidies received by cross-owned companies, including companies that did not produce subject merchandise during the POI, provided that the companies have the ability to produce subject merchandise. *See Fabrique,* 166 F. Supp. 2d at 602–603 (holding that actual production is not required and sustaining the attribution of subsidies where there is majority voting ownership of an entity and the entity possesses the ability to produce subject merchandise).

In their questionnaire response, the Jingu Companies stated that Zhejiang Wheel World is unable to manufacture steel wheels that fall within the dimensional specifications of the scope of the investigation due to ''specification and capacity differences of certain key equipment.'' *See* the Jingu Companies' August 5, 2011, questionnaire response at 5–6. However, though requested, the Jingu Companies did not provide a description of the inputs and machinery used by Zhejiang Wheel World. Instead, the Jingu Companies stated that the production process of Zhejiang Wheel World is the ''same as Zhejiang Jingu's.'' *Id.* at 3. Furthermore, the product lists of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World, indicate an overlap with regard to steel wheels whose dimensions fall within the scope of the investigation. *Id.* at Exhibits 2–4. Therefore, notwithstanding claims made by the Jingu Companies in the narrative of its questionnaire response that Zhejiang Wheel World cannot make subject merchandise, actual source documents concerning Zhejiang Wheel World's products lines and production process lead us to preliminarily determine otherwise. Therefore, we preliminary determine that subject merchandise could be produced by Zhejiang Wheel World, and consistent with *Fabrique* and 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Zhejiang Wheel World to the consolidated sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World (net of intra-company sales).

Concerning Shanghai Yata, which exported subject merchandise during the POI, we note that 19 CFR 351.525(c) states that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Therefore, we have attributed subsidies received by Shanghai Yata to the consolidated sales of Zhejiang Jingu, Chengdu, Zhejiang Wheel World, and Shanghai Yata (net of intra-company sales).

In addition, in accordance with 19 CFR 351.525(b)(6)(ii) we have attributed subsidies received by Zhejiang Jingu and Chengdu, which are cross-owned producers of subject merchandise, to the consolidated sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World (net of intra-company sales).

The Centurion Companies

Centurion was established on June 27, 2005. It produces a variety of steel wheels, including subject merchandise. During the POI, Centurion was owned by a Hong Kong-registered company and a private individual. Jining CII Wheel Manufacture Co., Ltd. (Jining CII) was formed on January 25, 2005, as a PRC-based foreign joint venture. In 2008, Jining CII's shares changed hands and, as a result, it became a wholly-foreign owned enterprise. Jining CII also produces a variety of steel wheels, including subject merchandise. Proprietary information contained in the Centurion Companies' initial questionnaire response indicates that Centurion and Jining CII are majority owned by the same individual, Person A.[24] Therefore, in accordance with 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Centurion and Jining CII are cross-owned.

Further, a sibling of Person A, hereinafter referred to as Person B, owns a minority share of Centurion. *See* the Centurion Companies' July 15, 2011, questionnaire response at Exhibit 1. The Centurion Companies also reported that another entity, Company A, provided steel cutting services related to disk production for Centurion. *Id.* at Exhibits 1 and 2.[25] The Centurion Companies report that disk production is part of the production process for steel wheels. *Id.* at 5. Company A is housed within Centurion's production facility, provided its cutting services exclusively to Centurion, and was Centurion's primary provider of such services during the POI. *Id.; see also* the Centurion Companies' August 8, 2011, questionnaire response at 1. Information in the Centurion Companies' questionnaire response indicates that Company A is wholly-owned by Person C, who is the spouse of Person B, Centurion's minority owner.

Section 351.525(b)(6)(vi) of the Department's regulations states that 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. While this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations, the *Preamble* states that ''the underlying rationale for attributing subsidies between two separate corporations is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits).'' *Countervailing Duty Regulations,* 63 FR 65347, 65401 (November 25, 1998) (*Preamble*). Hence, there may be situations where, due to a combination of other factors, the standard is met even where there is no majority voting ownership interest between, or common ownership of, the corporations. In this case, the record demonstrates that (a) The owners of Centurion and Company

[24] The names of the individuals that own Centurion and Jining CII are business proprietary. We refer to the principal owner of Centurion and Jining CII as Person A.

[25] The name of the company is proprietary. Therefore, we have referred to it as Company A in this notice.

A are closely related by primary family relations (husband/wife, siblings), and (b) Company A's operation is (1) Housed entirely within the facilities of Centurion, (2) devoted exclusively toward Centurion's production of subject merchandise, and (3) is the primary source for an essential step in Centurion's production of subject merchandise. Taking into consideration all of these factors combined, we find that the relationship between Centurion and Company A meets the cross-ownership standard under 19 CFR 351.525(b)(6)(vi) in that Centurion is in a position to use or direct the individual assets of Company A in essentially the same ways that it can use its own assets. Accordingly, we preliminarily determine that Company A is cross-owned with Centurion, and Jining CII under 19 CFR 351.525(b)(6)(vi). Further, we find that the co-production of subject merchandise between Centurion and Company A meets the attribution standard under 19 CFR 351.525(b)(6)(ii). This is consistent with the Department's finding in a similar situation in *OCTG from the PRC. See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination,* 74 FR 47210, 47215 (September 15, 2009) (*OCTG from the PRC Preliminary Determination*) (attributing subsidies received by Yuangtong to TCPO because Yuangtong had direct involvement in the production of the subject merchandise during the POI); unchanged in *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) (*OCTG from the PRC*), and accompanying Issues and Decision Memorandum (OCTG from the PRC Decision Memorandum).

Thus, based on the above, and in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Centurion, Jining CII, and Company A to the three companies' consolidated sales (net of intra-company sales).

The Xingmin Companies [26]

Xingmin, a domestically owned company established in December 1999, is a producer of subject merchandise and other steel wheels sold in both the PRC and overseas markets. Xingmin sells subject merchandise to the United States through its affiliated U.S. resellers. Xingmin's subsidiary, Sino-tex (Longkou) Wheel Manufacturers Inc. (Sino-tex), a foreign invested enterprise (FIE) established in January 2005, also produces subject merchandise, which is sold in the PRC market. Xingmin and Sino-tex are located in the Longkou Economic Development District in Shandong Province.

Tangshan Xingmin Wheel Co., Ltd. (Tangshan) is a wholly-owned subsidiary of Xingmin that was established in October 2010. Tangshan, located in Hebei Province, did not produce any products during the POI because it was still under construction at that time.

Xingmin, Sino-tex, and Tangshan are managed and controlled by the same individuals.[27] We, thus, preliminarily determine that these firms can use each other's assets in essentially the same way they can use their own assets. Accordingly, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Xingmin, Sino-tex, and Tangshan are cross-owned companies.[28] Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Xingmin and Sino-tex by the consolidated sales of Xingmin and Sino-tex (net of intra-company sales).

Benchmarks and Discount Rates

The Department is investigating loans received by the Jingu Companies, Centurion Companies, and Xingmin Companies from Chinese policy banks, state-owned commercial banks (SOCBs), and other commercial banks which are alleged to have been granted on a preferential, non-commercial basis. The Department is also investigating various grants received by the Jingu Companies. As such, the derivation of the Department's benchmark and discount rates is discussed below.

Benchmark for 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 for benchmarking purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in *CFS from the PRC,* 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. *See* CFS from the PRC Decision Memorandum at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, because Chinese banks reflect significant government intervention in the banking sector, 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. *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) (*Lumber from Canada*), and accompanying Issues and Decision Memorandum (Lumber from Canada Decision Memorandum) at ''Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.''

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC. See* CFS from the PRC Decision Memorandum at Comment 10; *see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at ''Benchmarks and Discount Rates.'' This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national

[26] For source of information concerning the corporate structure of the Xingmin Companies, *see* Xingmin's Initial Questionnaire Response (July 15, 2011) at 1–4 and Exhibit 1.

[27] *See* Xingmin's Initial Questionnaire Response at 2.

[28] In this preliminary determination, we find that Tangshan received no subsidies and had no sales during the POI.

incomes (GNIs) similar to the PRC. The benchmark interest rate takes into account a key factor involved in interest rate formation (*i.e.,* the quality of a country's institutions), which is not directly tied to the state-imposed distortions in the banking sector discussed above.

This methodology relies on data published by the World Bank and International Monetary Fund (*see* further discussion below). For the year 2010, the World Bank, however, has not yet published all the necessary data relied on by the Department to compute a short-term benchmark interest rate for the PRC. Specifically, the World Governance Indicators are not yet available. Therefore, for purposes of this preliminary determination, where the use of a short-term benchmark rate for 2010 is required, we have applied the 2009 short-term benchmark rate for the PRC, as calculated by the Department (*see* discussion below). The Department notes that the current 2009 loan benchmark may be updated, pending the release of all the necessary 2010 data, by the final determination.

The 2009 short-term benchmark was computed following the methodology developed in *CFS from the PRC.* We first determined which countries were similar to the PRC in terms of GNI, based on the World Bank's classification of countries as low income, lower-middle income, upper-middle income, and high income. For 2009, the PRC was in the lower-middle income category, a group that included 55 countries. *See* World Bank Country Classification, *http://econ.worldbank.org/.* As explained in *CFS from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates. *See* CFS from the PRC Decision Memorandum at ''Benchmarks'' and Comment 10.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as ''low middle income'' by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD 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. 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 the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.

For the resulting inflation-adjusted benchmark lending rate, *see* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''2009 Short-Term Interest Rate Benchmark'' (August 29, 2011). Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS.

Benchmark for Long-Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. 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. *See Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*), and accompanying Issues and Decision Memorandum (LWRP from the PRC Decision Memorandum) at ''Discount Rates.'' 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. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid from the PRC Decision Memorandum) at Comment 14.

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 the subsidy.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Policy Loans to the Steel Wheels Industry

The Department examined whether steel wheels producers received preferential lending through SOCBs or policy banks. According to the allegation, preferential lending to the auto and steel wheels industry is supported by the GOC through the issuance of national and provincial five-year plans, industrial plans for the automotive and nonferrous metal sector, catalogues of encouraged industries, and other government laws and regulations. Based on our review of the responses and documents provided by the GOC, we preliminarily determine that loans received by the steel wheels industry from SOCBs and policy banks were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the automotive and steel wheels industry. At the national level, the GOC has placed an emphasis on the development of high-end, value-added automotive products through foreign investment as well as through technological research, development, and innovation. In laying out this strategy, the GOC has identified specific products selected for development. For example, the GOC implemented the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the 11th Five-Year Plan. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems ''encouraged,'' ''restricted,'' and ''eliminated,'' and describes how these projects will be considered under government policies. For the ''encouraged'' projects, Decision 40 outlines several support options available from the government, including financing. *See* Decision 40 at Articles 13 and 17, which was placed on the record of this investigation in the Department's August 29, 2011, Memorandum to the File, from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure

Adjustment for Implementation (No. 40 (2005)) (Decision 40).'' The GOC's Industrial Catalogue includes as ''encouraged investment industries'' within the auto industry the ''design and development of auto, motorcycle, and their engines and key parts,'' ''manufacturing of such key auto parts and components as automatic transmission box, transmission box for heavy-duty cars and advanced and appropriate auto and engine with independent property rights,'' and ''precision forging, multiple workplace moulding and forging of key auto parts.'' *See* Exhibit III–9 of the Petition at ''(XIII) Auto.''

Other industrial plans also discuss the development and encouragement of the PRC's automotive and auto parts industries. For example, the GOC's ''Catalogue of Industry, Product and Technology Key Supported by the State at Present'' (Key Industry Catalogue) lists, as investment projects, the ''development of key automotive parts,'' ''precision forging, ferrous casting and nonferrous casting and rough blanks of important auto components,'' and ''development systems for complete vehicles, complete motorcycle and engines, components and parts.'' *See* Exhibit III–8 of the Petition at ''XXI. Vehicle.''

The ''Formal Policy on the Development of the Automobile Industry'' (Formal Automobile Policy) similarly states that the GOC aims to make the PRC's automobile industry a ''pillar industry.'' *See* Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding ''Placement of Formal Policy on the Development of the Automobile Industry on Record'' (July 26, 2011). The Formal Automobile Policy also states under Chapter III—Structure of the Industry, that auto parts manufacturers meeting certain production and technology development requirements shall enjoy the following benefits enumerated under Article 12:

1. Zero rate of orientation regulation tax for its investment in fixed assets;

2. Priority for it to issue and list its shares and debentures;

3. Active support in bank loans;

4. Priority for its use of overseas funds in the foreign funds use plan;

5. Policy-based loans will be arranged for projects of economic cars, auto parts and components, die sets and casting and forging mills; and

6. The financial company within an enterprise group may expand its business scale after approval of relevant State departments.

Id. Further, under Chapter V—Investment and Financial Policy for the Formal Automobile Policy—it states:

Article 22: The State guides the enterprises or enterprise groups possessing technological and management advantages to coop with localities which have a good investment environment and an ample supply of fund to develop key products of automotive industry in accordance with the overall State plan.

Article 24: The State will formulate the corresponding policy to encourage inter-regional or inter-department flow of investment and protect legal rights and interests of investors.

Article 26: Under approval of the State Council, automobile enterprises may apply for pilot capitalization of the State debts.

Id. In addition, under Chapter XII—Industrial Policies, Program and Project Management Formal Automobile Policy states:

Article 56: The State guides development of the automotive industry through the automotive industry policy and program. All the localities and departments should support development of the automotive industry in accordance with the automotive industry policy and program promulgated by the State Council.

Id. The GOC claims that it ceased its Formal Automobile Policy in 2004. *See* the GOC's July 5, 2011, questionnaire response at Exhibit 54. However, even accepting the GOC's claim, we preliminarily determine that the successor industrial policy for the PRC's automotive industry, the Policy on the Development of the Automotive Industry of 2004 (Automotive Industry Policy), indicates the GOC's goal of targeting the PRC's automotive and auto parts industries for development. For example, Chapter I—Aim of Policy the Automotive Industrial Policy states:

Article 1: The principle of combining the fundamental role of market allocation of resources with the macro-control of the government shall be adhered to so as to create a market environment of fair competition and unification, and improve the administrative system of rule by law on automotive industry. *The functional departments of the governments shall,* in accordance with the mandatory requirements of the administrative laws and regulations and the technical specification, implement administration on the enterprises undertaking the production of automobiles, farming transportation vehicles (low speed cargo trucks and tri-cars, the same hereinafter), motorcycles and components and parts, and the products thereof, *and regulate market acts of various economic bodies in the field of automotive industry.*

See the GOC's July 5, 2011, questionnaire response at Exhibit 54, emphasis added. Under Chapter VIII—Components and Parts and Relevant Industries of the policy states:

Article 31: A special development plan for the components and parts shall be made to give guidance and support to the products of automobile components and parts through classification, and to guide the public funds to invest into the field of production of automobile components and parts, and impel the enterprises of components and parts that have comparative advantages to form the ability of specialization, large batch of production and modularization goods supply. *For those enterprises undertaking the production of components and parts, which can support several independent enterprises that undertake the production of the whole vehicles and which enter into the international system of procurement of automobile components and parts, the state shall support them in priority in such aspects as the introduction of technology, technological transformation, financing and merger and reorganization, etc.* The enterprises undertaking the production of the whole automobiles shall stock components and parts from the society by ways of electronic commerce, or net procurement step by step.

Id., emphasis added. The Automotive Industrial Policy also states under Chapter X—Investment administration that only ''approved'' projects shall receive financing from state-owned banks:

Article 51: Where the investment projects subject to approval fail to obtain the notice of approval, the departments of land administration shall not handle land requisition, the state-owned banks shall not issue loans, the customs shall not handle tax exemption, the securities regulatory commission shall not approve the issuance of stocks and listing, and the administrative departments for industry and commerce shall not handle formalities for the registration of newly established enterprises. The relevant departments of the state shall not accept the admission application of the production enterprises and their products.

Id.

In addition, the Restructuring and Revitalization Plan of Auto Industry (Restructuring and Revitalization Plan) also indicates that the GOC has targeted the PRC's automotive and auto parts industries for development support. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding ''Placement of Restructuring and Revitalization Plan of Auto Industry on Record of Investigation'' (August 29, 2011) (Restructuring and Revitalization Plan Memorandum). The Restructuring and Revitalization Plan states that the ''auto industry is an important pillar industry of the national economy.'' *See* Restructuring and Revitalization Plan Memorandum at 2. Under ''Main Tasks of Industrial Restructuring and Revitalization,'' the plan states that ''{b}ackbone auto parts enterprises will

be supported to enlarge scale and raise market share in domestic and foreign markets through merger and reorganization.'' *Id.* at 4. Under ''Implement the Strategy of Proprietary Brands'' the plan states:

> Pertinent policies will be formulated in such aspects as technical development, government procurement and financing channels to steer auto makers to regard the development of proprietary brands as their strategic emphasis, and support them to develop proprietary brands by means of independent development, joint development, domestic and overseas M&A and so on.

Id. at 5. Under ''Implement Auto Product Export Strategy'' the plan states:

> We will accelerate the construction of national auto and auto parts export bases and establish auto export information, product certification, generic technology development, test and detection, training and other public service platforms.

Id. at 5–6. Under ''Intensify Investment in Technical Progress and Upgrading'' the plan states:

> In next three years, RMB10 billion of fund will be allocated from the increased central investment. This fund will be used as a special fund for technical progress and upgrading and mainly support auto makers to upgrade products and raise the level of the key technologies for energy conservation, environmental protection and safety; develop the key assembly products, * * * establish auto and auto parts generic technology R&D and testing platforms; and develop AEVs and the parts dedicated to them.

Id. at 7. Lastly, under ''Implement the Plan,'' the provinces are instructed to formulate ''concrete'' steps in order to carry out the goals established in the Restructuring and Revitalization Plan. *Id.* at 8. This section contains an annex listing the projects covered by the Restructuring and Revitalization Plan. The annex includes a listing for ''High-strength steel wheels'' classified under ''Other key parts.'' *Id.* at 16.

As noted in *Citric Acid from the PRC,* in general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals. *See* Citric Acid from the PRC Decision Memorandum at Comment 5. Where such plans or policy directives exist, then it is the Department's practice to determine that a policy lending program exists that is specific to the named industry (or producers that fall under that industry). *See* CFS from the PRC Decision Memorandum at Comment 8, and LWTP from the PRC Decision Memorandum at ''Government Policy Lending Program.'' Once that finding is made, the Department relies upon the analysis undertaken in *CFS from the PRC* to further conclude that national and local government control over the SOCBs result in the loans being a financial contribution by the GOC. *See* CFS from the PRC Decision Memorandum at Comment 8. Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of the automobile industry, including the production of auto parts, through policy lending.

The GOC, Centurion Companies, Jingu Companies, and Xingmin Companies provided source documents concerning the largest loans they had outstanding during the POI. Information in these business proprietary documents further supports our determination that the GOC has a policy in place to encourage the development of the production of steel wheels through policy lending. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding ''Excerpts of Internal Loan Documents of the Respondent Companies'' (August 29, 2011) (Internal Loan Document Memorandum).

The Centurion Companies, Jingu Companies, and Xingmin Companies reported that they had outstanding loans from PRC-based banks during the POI. Consistent with our determinations in prior proceedings, we preliminarily determine that these PRC-based banks to be SOCBs. *See* OCTG from the PRC Decision Memorandum at Comment 20 (*explaining* that the Department considers banks that are owned or controlled by the government to be public authorities under the CVD law); and *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea,* 67 FR 62102 (October 3, 2002) and accompanying Issues and Decision Memorandum at Comment 1 (finding that minority interest in an entity may be enough to find that it acts as a government authority).

We preliminarily determine that the loans to steel wheel producers from SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they 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). We further preliminarily determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the automotive and auto parts industry, including producers of steel wheels.

To determine whether a benefit is conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest the respondents paid on their outstanding loans to the amount they would have paid on comparable commercial loans.[29] *See* 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the ''Benchmarks and Discount Rates'' section above.

We have attributed benefits under this program to respondents' total sales, net of intra-company sales. Thus, for the Centurion Companies, we divided the benefit by the total sales of Centurion, Jining CII, and Company A. For the Xingmin Companies, we divided the benefits by the total sales of Xingmin and Sino-tex. For the Jingu Companies, we divided the benefits by the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World.

On this basis, we preliminarily determine countervailable subsidy rates of 0.17 percent *ad valorem* for the Centurion Companies, 0.94 percent *ad valorem* for the Jingu Companies, and 0.07 percent *ad valorem* for the Xingmin Companies.

B. Two Free, Three Half Tax Exemptions for Productive FIEs

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs which are ''productive'' and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed ''productive'' if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises. The Department has previously found this program countervailable. *See, e.g.,* CFS from the PRC Decision Memorandum at 10–11. Sino-tex, Zhejiang Wheel World, and Jining Centurion are ''productive'' FIEs and received benefits under this program during the POI.

[29] Consistent with 351.505(a), in making this comparison, the Department relied on effective interest rates, *i.e.,* taking into account any other costs besides the nominal interest, such as relevant fees.

We preliminarily determine that the exemption or reduction in the income tax paid by ''productive'' FIEs under this program 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 recipients in the amount of the tax savings. *See* sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption/reduction afforded by this 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. *See* CFS from the PRC Decision Memorandum at Comment 14.

For the 2009 tax year (for which tax returns were filed during the POI), Sino-tex, Zhejiang Wheel World, and Jining CII were eligible for a 50 percent reduction in their income tax liability. Specifically, the firms paid a preferential income tax rate of 12.5 percent instead of 25 percent. Thus, the benefit is equal to the tax savings. *See* 19 CFR 351.509(a)(1). To calculate the benefit, we treated the income tax savings enjoyed by the firms as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

To calculate the net subsidy rate for the Xingmin Companies, we divided the tax savings received by Sino-tex by the consolidated sales of Xingmin and Sino-tex (exclusive of intra-company sales). For the Jingu Companies, we divided the tax savings received by Zhejiang Wheel World by the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World (net of intra-company sales). For the Centurion Companies, we divided the tax savings received by Centurion by the total sales of Centurion, Jining CII, and Company A (net of intra-company sales).

On this basis, we preliminarily determine total net subsidy rates of 0.06 percent *ad valorem* for the Xingmin Companies, 0.08 percent *ad valorem* for the Jingu Companies, and 0.52 percent *ad valorem* for the Centurion Companies.

C. Exemption From Local Taxes for FIEs

Sino-tex, Xingmin's subsidiary, reported that for tax year 2009, the company received local tax exemptions, pursuant to the ''Circular Concerning Temporary Exemption from Urban Maintenance and Construction Tax and Additional Education Fees for Foreign Investment Enterprises,'' dated February 25, 1994.[30] Specifically, Sino-tex, which is an FIE, was exempt from paying the ''Urban Maintenance and Construction Tax,'' ''Education Surcharge,'' and ''Local Education Surcharge,'' hereafter, ''local taxes.''[31]

Consistent with our findings in *Drill Pipe from the PRC* and *Kitchen Racks from the PRC,* we preliminarily determine that the exemption from the local taxes confers a countervailable subsidy. *See* Drill Pipe from the PRC Decision Memorandum at ''Exemption from City Construction Tax and Education Tax for FIEs,'' and *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 37012 (July 27, 2009) (*Kitchen Racks from the PRC*), and accompanying Issues and Decision Memorandum (Kitchen Racks from the PRC Decision Memorandum) at ''Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province.'' The exemption is a financial contribution in the form of revenue forgone by the government and provides a benefit to the recipient in the amount of the savings. *See* sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption from local taxes is limited as a matter of law to certain enterprises, *i.e.,* FIEs, and, hence, specific under section 771(5A)(D)(i) of the Act. To calculate the benefit, we treated Sino-tex's tax exemption as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

To compute the amount of local tax savings, we compared the local tax rates that Sino-tex would have paid in the absence of the program[32] with the rates that Sino-tex paid[33] because it is an FIE.

To calculate the total benefit under the program, we summed the exemption from each local tax and then divided that tax savings amount, received during the POI, by the total consolidated sales of Xingmin and Sino-tex (exclusive of intra-company sales), as discussed in the ''Attribution of Subsidies'' section above. On this basis, we preliminarily determine the countervailable subsidy rate to be 0.01 percent *ad valorem* for the Xingmin Companies.

D. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment

The Jingu Companies reported that Zhejiang Jingu and Zhejiang Wheel World received an income tax deduction during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program. According to the GOC, this program was established on July 1, 1999, pursuant to ''Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects.'' *See* the GOC's July 5, 2011, questionnaire response at 25. The GOC states that under the program a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year.

We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(C) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods. We note that the Department found this program countervailable in *Line Pipe from the PRC. See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Line Pipe from the PRC Decision Memorandum) at ''Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies.''

The GOC states that pursuant to the ''Circular on Relevant Issues with Respect to Ceasing Implementing of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises,'' the program was terminated effective January 1, 2008. *See* the GOC's July 5, 2011, questionnaire response at Exhibit 57. Thus, the GOC implies that the Department should not include any subsidy rates calculated for the Jingu Companies under this program in the companies' cash deposit rate, as

[30] *See* the Xingmin Companies' August 10, 2011, supplemental questionnaire response at 24.

[31] *Id.* at 23.

[32] The regular tax rates are as follows: seven percent for Urban Maintenance and Construction Tax, three percent for Education Surcharge, and two percent for Local Education Surcharge. *Id.* at Exhibit 14.

[33] The preferential tax rate that Sino-tex paid for each of the local taxes was zero percent. *Id.*

described under 19 CFR 351.526(a). However, the GOC and the Jingu Companies nonetheless have reported that Zhejiang Jingu and Zhejiang Wheel World received benefits under this program during the POI. *See* the Jingu Companies' July 7, 2011, questionnaire response at 16; *see also* the Jingu Companies' August 5, 2011, questionnaire response at 14. Under 19 CFR 351.526(d)(1), the Department will not grant a program-wide change, as described under 19 CFR 351.526(a), in instances in which residual benefits continue to be bestowed under the terminated program. Because the GOC continues to bestow benefits under the program, we preliminarily determine that the conditions necessary for finding a program-wide change are not met.

We find that the benefit is equal to the tax savings received under the program, as reported on the company's tax return filed during the POI. See 19 CFR 351.509(a)(1) and (b)(1). Further, we have treated the tax savings as recurring subsidies consistent with 19 CFR 351.509(c)(1).

To calculate the net subsidy rate, we divided the benefits received by Zhejiang Jingu and Zhejiang Wheel World by the total sales of the Zhejiang Jingu, Chengdu, and Zhejiang Wheel World. On this basis, we calculated a net countervailable subsidy rate of 0.62 percent *ad valorem* for the Jingu Companies.

E. Import Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the import tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. *See* the GOC's July 5, 2011, questionnaire response at 44. The NDRC and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. The Department has previously found this program to be countervailable. *See, e.g.,* Citric Acid from the PRC Decision Memorandum at ''VAT Rebate on Purchases by FIEs of Domestically Produced Equipment,'' and *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Seamless Pipe from the PRC Decision Memorandum) at ''Tariff and VAT Exemptions for Imported Equipment.'' Xingmin and Zhejiang Jingu, domestically-owned companies, reported receiving import tariff exemptions under this program for imported equipment.

We preliminarily determine that the import tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the tariff savings. *See* sections 771(5)(D)(ii) and 771(5)(E) of the Act; *see also* 19 CFR 351.510(a)(1). We further preliminarily determine that the import tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, *i.e.,* FIEs and domestic enterprises with government-approved projects. *See* CFS from the PRC Decision Memorandum at Comment 16, and *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) (*OTR Tires from the PRC*), and accompanying Issues and Decision Memorandum (OTR Tires from the PRC Decision Memorandum) at ''VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries.''

Normally, we treat exemptions from import charges as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Therefore, we are examining the import tariff exemptions that the respondents received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. For Xingmin and Zhejiang Jingu, the companies received import tariff exemptions against equipment imported only during the POI. For each company, we performed the 0.5 percent test on the sum of the import tariff exemptions received during the POI. *See* 19 CFR 351.524(b)(2). In the case of the Xingmin Companies, we used the total sales of Xingmin and Sino-tex (net of intra-company sales). In the case of the Jingu Companies, we used the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World (net of intra-company sales).

For the Xingmin Companies, the amount exempted was more than 0.5 percent of the POI total sales. Therefore, for these exemptions, we had to determine whether Xingmin's import tariff exemptions were tied to the capital structure or capital assets of the firm. Based on the description of the items imported in the POI, we preliminarily find that the exemptions were for capital equipment.[34] As such, for these exemptions, we have allocated the benefit over the 12-year AUL using a discount rate as described under the ''Benchmarks and Discount Rates'' section above.

For the Jingu Companies, the amounts exempted were less than 0.5 percent of their respective total sales. Therefore, we expensed the exemptions to the year in which they were received, *i.e.,* the POI, which is consistent with 19 CFR 351.524(a).

On this basis, we preliminarily determine the net countervailable subsidy rates to be 0.12 percent *ad valorem* for the Xingmin Companies and 0.29 percent *ad valorem* for the Jingu Companies.

F. Provision of Hot-Rolled Steel for Less Than Adequate Remuneration

The Department is investigating whether GOC authorities provided hot-rolled steel (HRS) to producers of steel wheels for less than adequate remuneration (LTAR). As instructed in the Department's questionnaires, the respondent companies identified the suppliers from whom they purchased HRS during the POI. In addition to the supplier names, they reported the date of payment, quantity, unit of measure,

[34] *See* Xingmin's initial questionnaire response at Exhibit 20.

and purchase price for the HRS purchased during the POI. None of the respondent companies reported purchases of HRS during the POI from trading companies.

In *OTR Tires from the PRC,* the Department determined that majority government ownership of an input producer is sufficient to qualify it as an ''authority.'' *See* OTR Tires from the PRC Decision Memorandum at ''Government Provision of Rubber for Less than Adequate Remuneration.'' Therefore, we preliminarily determine that the HRS producers which are majority-owned by the government are ''authorities'' under section 771(5) of the Act. As a result, we preliminarily determine that HRS supplied by companies deemed to be government authorities constitute a financial contribution in the form of a governmental provision of a good and that the respondents received a benefit to the extent that the price they paid for HRS produced by these suppliers was for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act. Thus, we preliminarily determine that the GOC authorities' provision of HRS constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

As explained above, we preliminarily determine that the GOC has failed to act to the best of its ability in terms of providing the Department with the information it requested concerning the ownership of the firms that produced the HRS purchased by respondents during the POI. Specifically, in many instances, the GOC failed to provide any of the requested ownership information. In other instances, the GOC provided basic ownership information (*e.g.,* capital verification reports, business registration licenses, and articles of association) but failed to respond to questions concerning the extent to which the owners of the HRS producers were CCP officials and the extent to which CCP officials rendered the HRS producers government authorities. Thus, in such instances, pursuant to section 776(b) of the Act, we are assuming that the HRS producers were government authorities that provided financial contributions to respondents under section 771(D)(iii) of the Act.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.,* actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[35] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold HRS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[36]

In its initial questionnaire response, the GOC provided information, in the aggregate, on the amount of HRS produced by SOEs, collectives, and private producers in the PRC. *See* the GOC's July 15, 2011, questionnaire response at page II–4. Using these data, we derived the ratio of HRS produced by government entities (SOEs and collectives) during the POI (70.18 percent). Consequently, because of the government's overwhelming involvement in the HRS market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (*i.e.,* such a benchmark would reflect the distortions of the government presence).[37] As we explained in *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.[38]

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. We note that petitioners provided data from *MEPS International Ltd. Prices,* which contains monthly ''world'' prices for hot-rolled coil. *See* Exhibit 1 of petitioners' August 2, 2011, submission titled ''Benchmark Date for World Steel Prices.'' Zhejiang Jingu provided data from the American Metal Market's *SteelBenchmarker,* which contains monthly ''world export market'' prices for hot-rolled coil. *See* Attachment 1 of Zhejiang Jingu's August 19, 2011, submission titled ''Hot-Rolled Steel Benchmark Prices.''[39]

We preliminarily determine that the *MEPS International Ltd. Prices* and *SteelBenchmarker* data may serve as a world market benchmark price for HRS that would be available to purchasers of HRS in the PRC. We note that the Department has relied on pricing data from *MEPS International Ltd. Prices* in recent CVD proceedings involving the PRC. *See* Kitchen Racks from the PRC Decision Memorandum at ''Provision of Wire Rod from Less Than Adequate Remuneration,'' *see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 4936 (January 28, 2009) (*CWASPP from the PRC*), and accompanying Issues and Decision Memorandum at ''Provision of SSC for LTAR.'' We also note that the Department has relied on pricing data from *SteelBenchmarker* in recent CVD proceedings involving the PRC. *See Wire Decking From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 32902 (June 10, 2010), and accompanying Issues and Decision

[35] *See also* Lumber from Canada Decision Memorandum at ''Market-Based Benchmark.''

[36] *See Preamble,* 63 FR at 65377.

[37] *See* Lumber from Canada Decision Memorandum at ''There are no market-based internal Canadian benchmarks'' section.

[38] *See* Lumber from Canada Decision Memorandum at 38–39.

[39] On August 25, 2011, Zhejiang Jingu provided to the Department a copy of the underlying source data from the American Metal Market's *SteelBenchmarker* to support the hot-rolled coil prices reported in the August 19, 2011 submission.

Memorandum at ''Provision of HRS Steel for LTAR,'' *see also* CWP from the PRC Decision Memorandum at ''Hot-rolled Steel for Less Than Adequate Remuneration.''

The prices for HRS in the *MEPS International Ltd. Prices* and *SteelBenchmarker* listings are expressed in U.S. dollars (USD) per metric ton (MT). 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. Therefore, to determine the benchmarks, we calculated an average of the *MEPS International Ltd. Prices* and *SteelBenchmarker* HRS prices (inclusive of ocean freight, import duties, and inland freight from the port in China to the steel wheels factory) for each month of the POI. We first converted the benchmark prices from U.S. dollars to renminbi (RMB) using USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release. Because the *MEPS International Ltd. Prices* and *SteelBenchmarker* data do not include ocean freight, we added ocean freight to the each of the monthly HRS prices. *See* Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Ocean Freight Data'' (August 29, 2011). We also adjusted the data from *MEPS International Ltd. Prices* and *SteelBenchmarker* to include the value added tax (VAT) and import duties that would have been levied on imports of HRS during the POI. The GOC provided the applicable tax rates in its questionnaire response. *See* the GOC's July 15, 2011, questionnaire response at 9.

Concerning inland freight, we calculated company-specific inland freight rates using cost data supplied by the Centurion, Jingu, and Xingmin Companies. For further information concerning inland freight, see the respondents' respective Calculation Memoranda. Regarding the HRS prices that the respondents paid to government authorities, we included domestic VAT and inland freight. In this manner, we find the Department has conducted the comparison on an apples-to-apples basis.

To calculate the benefit, we then compared the benchmark unit prices to the unit prices the respondents paid to domestic suppliers of HRS during the POI that the Department has preliminarily determined constitute government authorities. In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the quantity of HRS purchased from the GOC authorities to arrive at the benefit.

Finally, with respect to specificity, the GOC has provided information on end uses for HRS. *See* the GOC's July 15, 2011, questionnaire response at 10. The GOC stated that the end uses of HRS relate to the type of industry involved as a direct purchaser of the input. The GOC further stated that the consumption of HRS occurs across a broad range of industries. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. *See* section 771(5A)(D)(iii)(I) of the Act. *See* LWRP from the PRC Decision Memorandum at Comment 7; *see also* Kitchen Racks from the PRC Decision Memorandum at ''Provision of Wire Rod for Less Than Adequate Remuneration.''

We find that the GOC's provision of HRS for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). To calculate the net subsidy rate, we divided the total benefit by each of the respondents' total sales during the POI, net of intra-company sales. For the Xingmin Companies, we used the total sales of Xingmin and Sino-tex. For the Centurion Companies, we used the total sales of Centurion, Jining CII, and Company A. For the Jingu Companies, we used the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World.

On this basis, we calculated the following net subsidy rates: 35.26 percent *ad valorem* for the Xingmin Companies, 24.67 percent *ad valorem* for the Centurion Companies, and 43.02 percent *ad valorem* for the Jingu Companies.

G. Provision of Electricity for LTAR

For the reasons explained in the ''Use of Facts Otherwise Available and Adverse Inferences'' section above, we are basing our preliminary determination regarding the government's provision of electricity in part on adverse facts available (AFA).

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. With regards to benefit, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. The respondents provided data on the electricity they consumed and the electricity rates paid during the POI.

Consistent with the Department's practice, we preliminarily find that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A) of the Act. To determine the existence and amount of any benefit from this program, we used the information provided by the respondents regarding the amounts of electricity that they purchased and the rates they paid for that electricity during the POI.

For determining the existence and amount of any benefit under this program, we have relied on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks because of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation. *See* section 776(b)(4) of the Act. The GOC reported that the provincial rate schedules of November 2009 were applicable during the POI.[40] As such, we have used the November 2009 provincial electricity tariff schedules as a benchmark rate source for the period January 2010 through December 2010. Specifically, we have placed on the record of this investigation, the November 2009 provincial electricity rate schedules, which were submitted to the Department by the GOC in the CVD investigation on *Drill Pipe from the PRC,* and which reflect the highest rates that the respondents would have paid in the PRC during the POI. *See* Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Provincial Electricity Tariff Schedules'' (August 29, 2011). From those electricity rate schedules, we selected the highest peak, normal, and valley rates for the ''large industrial'' user category and for the ''general industry and commercial'' user category, in addition to the highest provincial rate for the base rate. *See* Memorandum to

[40] *See* GOC Second Supplemental Questionnaire Response at 6.

File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Electricity Rate Benchmark Chart'' (August 29, 2011). The highest rates for all categories were sourced from the Zhejiang provincial rate schedule.

Consistent with our approach in *Drill Pipe from the PRC,* to measure whether the respondents received a benefit under this program, we first calculated the variable electricity cost they paid by multiplying the monthly kilowatt hours (KWH) consumed at each price category (*e.g.,* peak, normal, and valley) by the corresponding electricity rates charged at each price category by the respective province. Next, we calculated the benchmark variable electricity cost by multiplying the monthly KWH consumed at each price category (*e.g.,* peak, normal, and valley) by the highest electricity rate charged at each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the variable electricity cost paid by each respondent during the POI from the monthly benchmark variable electricity cost.

To measure whether the respondents received a benefit with regard to their transmitter capacity charge (aka, base charge), we first multiplied the monthly transmitter capacity charged to the companies by the corresponding consumption quantity, where appropriate. Next, we calculated the benchmark transmitter capacity cost by multiplying companies' consumption quantities by the highest transmitter capacity rate reflected in the electricity rate benchmark chart. To calculate the benefit, we subtracted the transmitter costs paid by the companies during the POI from the benchmark transmitter costs. This approach is consistent with Drill Pipe from the PRC. *See* Drill Pipe from the PRC Decision Memorandum at ''Provision of Electricity for LTAR.''

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 transmitter capacity payments.

To calculate the net subsidy rate pertaining to electricity payments made by the respondents, we divided the benefit amount by the appropriate total sales amount for the POI, as discussed in the ''Attribution of Subsidies'' section above. On this basis, we preliminarily determine net countervailable subsidy rates of 0.19 percent *ad valorem* for the Jingu Companies, 0.88 percent *ad valorem* for Centurion Companies, and 0.10 percent *ad valorem* for the Xingmin Companies.

H. State Special Fund for Promoting Key Industries and Innovation Technologies [41]

The Jingu Companies reported that Zhejiang Jingu applied for and received a lump-sum grant from the National Development and Reform Commission (NDRC) and the Ministry of Industry and Information Technology (MIIT) during the POI. *See* the Jingu Companies' July 29, 2011, questionnaire response at 15. The Jingu Companies state that the grant is a one-time grant that is intended to assist Zhejiang Jingu's development of new facilities at one of its steel wheels production facilities. In their response, the Jingu Companies included the application form it submitted under the program. *See* the Jingu Companies' July 29, 2011, questionnaire response at Exhibit 12. No other respondent companies reported receiving any grants under this program.

We preliminarily determine that the grant received by Zhejiang Jingu constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, based on our review of the application form Zhejiang Jingu submitted to the NDRC and MIIT, we preliminarily determine that the program is export-contingent.[42] Section 771(5A)(B) of the Act states, ''an export subsidy is a subsidy that is in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.'' The Department's regulations explain that we will consider a subsidy to be contingent upon export performance ''if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.'' *See* 19 CFR 351.514(a).

We preliminarily determine that the information regarding estimated export revenues included in the application Zhejiang Jingu filed with Ministry of Commerce, Industry, and Energy (MOCIE) is one of the conditions considered when issuing grants under the program and, thus, meets the specificity criteria under section 771(5A)(B) of the Act and 19 CFR 351.514. Indeed, the Preamble further clarifies that if exportation or anticipated exportation is the sole condition or one of several conditions, the subsidy is an export subsidy ''unless the firm in question can clearly demonstrate that it had been approved to receive the benefits solely under non-export-related criteria.'' *See Preamble,* 63 FR at 65381. We preliminarily determine that the Jingu Companies have not met this burden. Our approach in this regard is consistent with the Department's practice. *See, e.g., Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination,* 72 FR 60639 (October 25, 2007) (CFS from Korea), and accompanying Issues and Decision Memorandum (CFS from Korea Decision Memorandum) at Comment 24.

The grant that Zhejiang Jingu received during the POI was greater than 0.5 percent of the total export sales of the Jingu Companies during the POI. Therefore, we allocated the grant benefit over the 12-year AUL used in this investigation pursuant to the grant allocation methodology set forth under 19 CFR 351.524(d)(1).

To calculate the net subsidy rate, we divided the portion of the benefit allocated to the POI by the total exports sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. On this basis, we calculated a net subsidy rate of 0.28 percent *ad valorem.*

I. Initial Public Offering (IPO) Grants From the Fuyang and Hangzhou City Governments

The Jingu Companies report that the Fuyang City and Hangzhou City Governments provided one-time bonus payments to Zhejiang Jingu in recognition of the company's successful listing on the Shenzhen Stock Exchange. *See* the Jingu Companies' July 29, 2011, questionnaire response at 20. The Jingu Companies report that the city governments approved and issued the grants to Zhejiang Jingu in the same year. The Jingu Companies state that grants received from the Cities of Fuyang and Hangzhou were contingent upon the separate approval of each city government. *See* the Jingu Companies' July 29, 2011, questionnaire response at Exhibit 6.

We preliminarily determine that the grants received by Zhejiang Jingu constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

[41] GOC responses are still pending with regard to programs listed under items ''H'' through ''R.'' While we normally rely on government information when determining specificity, we find that the information contained in the questionnaire responses of the Jingu Companies is sufficient for purposes of the preliminary determination. We will take the GOC's questionnaire responses regarding these programs into consideration for the final determination.

[42] The application form submitted by Zhejiang Jingu is business proprietary. *See* the Jingu Companies' July 29, 2011, questionnaire response at Exhibit 12. For further discussion of specificity and our analysis of the proprietary details of the application submitted by Zhejiang Jingu, *see* Memorandum to file from Robert Copyak, Senior Financial Analyst, AD/CVD Operations, Office 3, regarding ''Preliminary Calculations for the Zhejiang Jingu Companies'' (August 29, 2011).

Regarding specificity, because the grants were limited to firms undertaking an IPO, we find the grants to be specific under section 771(5A)(D)(i) of the Act.

The Jingu Companies state that the IPO grants were subject to separate approval processes. Therefore, for purposes of our benefit and net subsidy rate calculations, we are treating each of the grants as separate programs. For grants that were less than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the year of approval, we expensed the grants to the year of receipt. *See* 19 CFR 351.524(b)(2). For grants that were greater than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the respective years of approval, we allocated the grant benefits over the 12-year AUL used in this investigation pursuant to the grant allocation methodology set forth under 19 CFR 351.524(d)(1).

On this basis, we calculated a net subsidy rate of 0.02 percent *ad valorem* for the Jingu Companies for the grant received from the Hangzhou City Government, and a net subsidy rate of 0.37 percent *ad valorem* for the Jingu Companies for the grants received from the Fuyang City Government.

J. Fuyang City Government Grant for Enterprises Paying Over RMB 10 Million in Taxes

The Jingu Companies reported that Zhejiang Jingu received a grant from the Fuyang City Government as a result of the company's tax payments exceeding RMB 10 million during the 2009 tax year. The Jingu Companies report that the Fuyang City Government approved and issued the grant to Zhejiang Jingu during the POI. *See* the Jingu Companies' July 29, 2011, questionnaire response at 26–27.

We preliminarily determine that the grant received by Zhejiang Jingu constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant was limited to firms whose tax payments exceeded RMB 10 million we preliminarily determine the grant to be specific under section 771(5A)(D)(i) of the Act.

The grant that Zhejiang Jingu received during the POI was less than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we calculated a total net subsidy rate of 0.04 percent *ad valorem* for the Jingu Companies.

K. Fuyang and Hangzhou City Government Grants for Enterprises Operating Technology and Research and Development Centers

The Jingu Companies report that Zhejiang Jingu received a series of grants from the Fuyang and Hangzhou City Governments during the POI solely because it operates provincial level technology and research and development centers. *See* the Jingu Companies' July 29, 2011, questionnaire response at 31. The Jingu Companies state that Zhejiang Jingu did not have to undertake any type of approval process in order to receive the funds. Though the grants were disbursed by city governments, we are treating these grants as a single, provincial program because the questionnaire response of the Jingu Companies indicates that the receipt of the grants was contingent upon Zhejiang Jingu operating technology and research and development centers in Zhejiang Province.

We preliminarily determine that the grants received by Zhejiang Jingu constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grants were limited to firms operating research and development centers within the province, we preliminarily determine the grants to be specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we summed the grants that Zhejiang Jingu received from the Fuyang and Hangzhou City Governments. The grants that Zhejiang Jingu received during the POI were less than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. Because there was no approval process under this program, we are using the year of receipt, the POI, for purposes of the 0.5 percent test. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we calculated a total net subsidy rate of 0.13 percent *ad valorem* for the Jingu Companies.

L. Hangzhou City Government Grants Under the Hangzhou Excellent New Products/Technology Award

The Jingu Companies reported that Zhejiang Jingu received two grants from the Hangzhou City Government in connection with a lightweight, high-strength steel wheel project as part of the Hangzhou Excellent New Products/Technology Award. *See* the Jingu Companies' July 29, 2011, questionnaire response at 33.

We preliminarily determine that the grants received by Zhejiang Jingu constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. To receive grants under this program firms must submit an application form. The application form submitted by Zhejiang Jingu includes information regarding its export sales. *See* the Jingu Companies' July 29, 2011, questionnaire response at Exhibit 13. Section 771(5A)(B) of the Act states, ''an export subsidy is a subsidy that is in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.'' The Department's regulations explain that we will consider a subsidy to be contingent upon export performance ''if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.'' *See* 19 CFR 351.514(a).

We preliminarily determine that the information regarding the export sales in the application Zhejiang Jingu filed with the Hangzhou City Government is one of the conditions considered when issuing grants under the program and, thus, meets the specificity criteria under section 771(5A)(B) of the Act and 19 CFR 351.514(a).

To calculate the benefit, we summed the grants that Zhejiang Jingu received from the Hangzhou City Governments. The grants that Zhejiang Jingu received during the POI were less than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the year of approval. Because there was no approval process under this program, we are using the year of receipt, the POI, for purposes of the 0.5 percent test. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI using as the denominator the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. On this basis, we calculated a total net subsidy rate of 0.02 percent *ad valorem* for the Jingu Companies.

M. Fuyang City Government Grants Under the Export of Sub-Contract Services Program

The Jingu Companies reported that Zhejiang Jingu received a grant from the Fuyang City Government in return for providing the city government with the total value of export sub-contract services that Zhejiang Jingu exported in 2009. The Fuyang City Government approved and disbursed the grant during the POI. *See* the Jingu Companies' July 29, 2011, questionnaire response at 39.

We preliminarily determine that the grant received by Zhejiang Jingu constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because the grant was contingent upon export performance we further preliminarily determine that the grant was specific under section 771(5A)(B) of the Act.

The grant that Zhejiang Jingu received during the POI was less than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI using as the denominator the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. On this basis, we calculated a total net subsidy rate of 0.02 percent *ad valorem* for the Jingu Companies.

N. Various Export Contingent Grants Provided by the Fuyang City Government

The Jingu Companies reported the Zhejiang Jingu received a series of grants from the Fuyang City Government during the POI. Specifically, Zhejiang Jingu received Exhibition Fee Reimbursement, Star Enterprise, Export Expansion Recognition, and Open Economic Development grants from the city government. Zhejiang Jingu also received Open Economic Development grants from the Fuyang City Government in a year prior to the POI. *See* the Jingu Companies' July 29, 2011, questionnaire response at 38.

We preliminarily determine that the grants received by Zhejiang Jingu constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because the grants were contingent upon export performance we further preliminarily determine that the grants were specific under section 771(5A)(B) of the Act.

The Jingu Companies report that Zhejiang Jingu did not submit an application to receive these grants. Instead, the Fuyang City Government disbursed the grants based on export revenue data and information on export-related marketing activities, such as exhibitions, that it receives from Zhejiang Jingu. Information in the questionnaire response of the Jingu Companies indicates that these grants include the exhibition reimbursement grants that it reported receiving under the Export Assistance Grant Program. Specifically, the Jingu Companies reference the grant it reported under the Export Assistance Grant Program in the context of the various export-related grants offered Fuyang City Government. *See* the Jingu Companies' July 29, 2011, questionnaire response at 39. Based on this information, we preliminarily determine to treat all of these grants as a single program when calculating the benefit. Furthermore, because Zhejiang Jing did not submit an application to receive these grants, we are equating the date of approval with the date of receipt.

To calculate the benefit from the grants received during the POI, we summed the grants that Zhejiang Jingu received from the Hangzhou City Government. The grants that Zhejiang Jingu received during the POI were less than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the year of approval. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI using as the denominator the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI.

The Open Economic Development grant that Zhejiang Jingu received from the Fuyang City Government prior to the POI was greater than 0.5 *percent* of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the year of receipt. Therefore, we allocated the grant benefit over the 12-year AUL used in this investigation pursuant to the grant allocation methodology set forth under 19 CFR 351.524(d)(1).

On this basis, we calculated a total net subsidy rate of 0.42 percent *ad valorem* for the Jingu Companies.

O. Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees

The Jingu Companies reported that the Hangzhou and Fuyang City Governments and the Government of Zhejiang Province reimbursed Zhejiang Jingu and Zhejiang Wheel World during the POI for export credit insurance fees the companies paid in 2008 and 2009. The Jingu Companies report that Zhejiang Jingu and Zhejiang Wheel World did not submit an application to receive the funds. Instead, the companies reported the fees it paid for export credit insurance to local authorities. *See* the Jingu Companies' July 29, 2011, questionnaire response at 44–45. Because Zhejiang Jing and Zhejiang Wheel World did not submit an application to receive these grants, we are equating the date of approval with the date of receipt.

We preliminarily determine that the reimbursements are grants that constitute a financial contribution and confer a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because receipt of the grants were contingent upon export performance, we preliminarily determine that they are specific under section 771(5A)(B) of the Act.

To calculate the benefit, we summed all of the grants that Zhejiang Jingu and Zhejiang Wheel World received from the Hangzhou and Fuyang City Governments and Government of Zhejiang Province. The grants that Zhejiang Jingu and Zhejiang Wheel World received during the POI were less than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI using as the denominator the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI.

On this basis, we calculated a total net subsidy rate of 0.08 percent *ad valorem* for the Jingu Companies.

P. Investment Grants From Fuyang City Government for Key Industries

The Jingu Companies report that the Fuyang City Government designated Zhejiang Jingu as a member of a ''key industry.'' *See* the Jingu Companies' August 10, 2011, supplemental questionnaire response at 7. The Jingu Companies report that Zhejiang Jingu, as a result of this designation, received a grant from the Fuyang City Government in connection with Zhejiang Jingu's investment in one of its steel wheel plants. *Id.*

We preliminarily determine that the grant constitutes a financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Furthermore, we preliminarily determine that Zhejiang Jingu's received the grant in connection with its designation as a member of a ''key industry.'' As a result, we preliminarily determine that access to the grant is limited as a matter of law (*e.g.,* limited to firms that are recognized as members of a ''key industry'') and therefore is specific under section 771(5A)(D)(i) of the Act.

The grant Zhejiang Jingu received was greater than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World in 2009. Therefore, we allocated the grant benefit over the 12-year AUL used in this investigation pursuant to the grant allocation methodology set forth under 19 CFR 351.524(d)(1).

On this basis, we calculated a total net subsidy rate of 0.07 percent *ad valorem* for the Jingu Companies.

Q. Income Tax Reductions Under Article 28 of the Enterprise Income Tax Law

The Jingu Companies state that Zhejiang Jingu paid a reduced income tax rate on the tax return it filed during the POR, in accordance with Article 28 of the Law of the PRC on Enterprise Income Tax. Specifically, Zhejiang Jingu paid an income tax rate of 15 percent on the tax return it filed during the POR rather than the standard rate of 25 percent. *See* the Jingu Companies' July 29, 2011, questionnaire response at 10–12.

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone by the GOC and provides a benefit in the amount of the tax savings. *See* sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.,* firms designated as high and new technology enterprises, and, hence, is specific under section 771(5A)(D)(i) of the Act. *See* the GOC's July 5, 2011, questionnaire response at Exhibit 61.

We calculated the benefit as the difference between the taxes Zhejiang Jingu would have paid under the standard 25 percent tax rate and the taxes the company actually paid under the preferential 15 percent tax rate, as reflected on the tax return it filed during the POI. *See* 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the net subsidy rate, we divided the tax savings by the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI.

On this basis, we calculated a net subsidy rate of 0.74 percent *ad valorem* for the Jingu Companies.

II. Programs Preliminarily Determined Not To Provide Countervailable Benefits During the POI

A. Export Incentive Payments 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.'' *See* 19 CFR 351.517(a); *see also* 19 CFR 351.102(b)(28) (for a definition of ''indirect tax''). 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 steel wheels sales in the domestic market is 17 percent and that the VAT exemption upon the export of steel wheels is 17 percent.[43] Thus, we have preliminarily determined that the VAT exempted upon the export of steel wheels did not confer a countervailable benefit because the amount of the VAT rebated on export is equal to the amount paid in the domestic market.

B. Revitalization of Key Industry and Technology Renovation of 2010 Special Fund

Xingmin reported that it received a non-recurring grant under this fund for its sedan wheel project in December 2010.[44] Xingmin stated that it was eligible for the grant because the sedan wheel project fell into the scope of the ''Central Investment Annual Work Focus of Revitalization of Key Industry and Technology Renovation of 2010'' program (*i.e.,* Work Focus 2010).[45] Xingmin explained that Work Focus 2010 covered nine different industries, including the automotive industry.[46] Xingmin stated that the Development and Reform Committee of Shandong Province approved its application in August 2010, and the Longkou Financial Bureau released the funds to the company in December 2010.[47]

Xingmin explained that the sedan wheel project pertains only to steel wheels sized from 10 inches to 16 inches in diameter and not to the steel wheels under investigation,[48] which are 18 inches to 24.5 inches in diameter. In support of its statement, Xingmin submitted a copy of the Shandong Province Engineering Consulting Institute's evaluation report of the sedan wheel project.[49] The documentation indicates that the merchandise which benefitted from the grant was sedan wheels sized from 10 inches to 16 inches in diameter.[50] Xingmin also submitted approval documentation from the Development and Reform Committee of Shandong Province and Longkou City Financial Bureau which indicates that the funds were approved and dispersed for the company's sedan wheel project.[51]

In the July 21, 2011, supplemental questionnaire issued to Xingmin, we asked the company to report the types of merchandise produced using the equipment purchased for the sedan wheel project and to state whether that equipment could be used to produce steel wheels sized from 18 inches to 24.5 inches in diameter. In its supplemental questionnaire response, Xingmin stated that the equipment imported for the sedan steel wheel project was being installed during the POI and, thus, was not used to produce any products.[52] Xingmin also stated that the equipment imported for the sedan steel wheel project does not have the ability to make subject merchandise, explaining that the equipment would require reconfiguration and revised mechanical connections with other machinery in order to manufacture subject wheels.[53]

Based on the questionnaire responses of the Xingmin Companies and consistent with 19 CFR 351.525(b)(5), we preliminarily determine that the grant received under this program was tied to non-subject merchandise and, thus, did not confer a benefit to the production or sales of subject merchandise of the Xingmin Companies during the POI.

C. Income Tax Reductions for Firms Located in the Shanghai Pudong New District

The Jingu Companies reported that Shanghai Yata paid a reduced income tax rate on the tax return it filed during the POI due to its location in the Shanghai Pudong New District.[54] We preliminarily determine that the benefit from this program results in net subsidy rate that is less than 0.005 percent *ad valorem.* Consistent with our past practice, we therefore have not included this program in our net countervailing duty rate calculations. *See, e.g.,* CFS from the PRC Decision Memorandum at ''Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE.''

[43] *See* GOC's initial questionnaire response at 57–59.

[44] *See* Xingmin's July 15, 2011, questionnaire response at 35–36, 38.

[45] *Id.* at 36–37.

[46] *Id.*

[47] *Id.* at 36.

[48] *Id.* at 35–37.

[49] *Id.* at Exhibit 32.

[50] *Id.* at 35–37.

[51] *Id.* at Exhibit 32.

[52] *See* Xingmin's August 10, 2011, supplemental questionnaire response at 33.

[53] *Id.* at 34.

[54] *See* the Jingu Companies' August 5, 2011, questionnaire response at 41–45.

III. Programs Preliminarily Determined To Be Not Used [55]

We preliminarily determine that the respondents did not apply for or receive benefits during the POI under the programs listed below:

A. Treasury Bond Loans
B. Preferential Loans for State-Owned Enterprises (SOEs)
C. Income Tax Reductions for Export-Oriented FIEs
D. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
E. Provision of Land to SOEs for LTAR
F. Provision of Land Use Rights within Donghai Economic Development Zone [56]
G. State Key Technology Renovation Fund
H. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the Centurion, Jingu, and Xingmin Companies as well as the information submitted by the GOC prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for subject merchandise produced and exported by the companies under investigation. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Producer/exporter	Net subsidy *ad valorem* rate %
Jining Centurion Wheel Manufacturing Co., Ltd. (Centurion) and Jining CII Wheel Manufacture Co., Ltd. (Jining CII) (collectively the Centurion Companies)	26.24
Shandong Xingmin Wheel Co., Ltd. (Xingmin) and Sino-tex (Longkou) Wheel Manufacturers Inc. (Sino-tex) (collectively, the Xingmin Companies)	35.62
Zhejiang Jingu Automobile Components (Zhejiang Jingu), Chengdu Jingu Wheel Co., Ltd. (Chengdu), Zhejiang Wheel World Industrial Co., Ltd. (Zhejiang Wheel World), and Shanghai Yata Industrial Co., Ltd. (Shanghai Yata) (collectively the Jingu Companies)	46.59
All Others	40.30

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, all three individual rates can be used to calculate the all-others rate. Therefore, we have assigned the weighted-average of these three individual rates to all-other producers/exporters of steel wheels from the PRC.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the 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), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. 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) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). 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.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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[55] There were several programs used by respondents in which the benefits were fully expensed prior to the POI. For these programs, *see* the respondents' calculation memoranda.

[56] This program was alleged as ''Provision of Land Use Rights Within Designated Geographical Areas for Less Than Adequate Remuneration'' in the Petition (*see* page III–22).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–976]

Galvanized Steel Wire From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of galvanized steel wire (galvanized wire) 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:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or David Lindgren, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–1395 or 202–482–3870, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On March 31, 2011, the Department received a countervailing duty (CVD) petition, filed in proper form, concerning imports of galvanized wire from the PRC.[1] The Department initiated a CVD investigation on April 20, 2011.[2]

As stated in the *Initiation Notice,* the Department released U.S. Customs and Border Protection (CBP) entry data for U.S. imports of galvanized wire from the PRC between January 1, 2010, and December 31, 2010, to be used as the basis for respondent selection.[3] The CBP entry data covered products included in this investigation which entered under Harmonized Tariff Schedule of the United States (HTSUS) numbers: 7217.20.3000; 7217.20.4510; 7217.20.4520; 7217.20.4530; 7217.20.4540; 7217.20.4550; 7217.20.4560; 7217.20.4570; and 7217.20.4580. In the Entry Data Memorandum, the Department noted that the scope also indicated that subject merchandise might also enter under HTSUS numbers: 7229.20.0015; 7229.90.5008; 7229.90.5016; 7229.90.5031; and 7229.90.5051. Parties were given seven days from the publication of the *Initiation Notice* to submit comments on the CBP data and respondent selection.

On May 3, 2011, Shanghai Bao Zhang Industry Co. Ltd. (SBZ) requested to be selected as a mandatory respondent in the CVD investigation.[4] Alternatively, SBZ requested that, if it were not selected as a mandatory respondent, the Department consider it as a voluntary respondent should a mandatory respondent fail to participate. Additionally, on May 4, 2011, SBZ, Anhui Bao Zhang Metal Products Co., Ltd. (ABZ) and B&Z Galvanized Wire Industry filed comments on respondent selection, arguing that the Department should treat all Bao Zhang companies as a single entity for respondent selection and should ensure that trading companies are not selected as mandatory respondents.[5] On May 18, 2011, the Department completed its respondent selection analysis. Specifically, the Department selected the following companies, in alphabetical order, as mandatory respondents in this CVD investigation: M&M Industries Co. Ltd. (M&M); Shandong Hualing Hardware and Tool Co., Ltd. (Shandong Hualing); and Tianjin Huayuan Metal Wire Products Co., Ltd. (HYW).[6] These companies accounted for the largest volume of exports of merchandise under consideration to the United States that the Department determined could be reasonably examined. The Department issued a CVD questionnaire to the Government of the PRC (GOC) and the mandatory respondents on May 19, 2011. Responses to this questionnaire were originally due on June 27, 2011.

On June 27, 2011, SBZ and its reported cross-owned affiliates (ABZ) and Shanghai Li Chao Industry Co., Ltd. (Li Chao) (collectively, the Bao Zhang Companies) submitted a questionnaire response.[7] The questionnaire response provided information that the Bao Zhang Companies were involved in the production and exportation of subject merchandise during the period of investigation (POI).

The GOC, HYW and M&M submitted requests on June 20, 2011, June 22, 2011, and June 24, 2011, respectively, for extensions to the deadline for their questionnaire responses. The Department extended the deadline for submission of these responses until July 5, 2011. On June 29, 2011, the GOC requested a second extension to the deadline for filing its questionnaire response. On July 1, 2011, HYW and M&M also requested a second extension to the deadline for filing questionnaire responses. The Department extended the deadline for submission of the questionnaire responses, a second time, until July 7, 2011. On July 7, 2011, questionnaire responses were filed by the GOC, HYW,[8] and M&M.[9] On July 7, 2011, the GOC requested an extension for submitting ownership information related to the producers from which the Huayuan Companies and the Bao Zhang Companies purchased wire rod and zinc inputs. On July 14, 2011, the Department granted the GOC an extension until July 19, 2011. On July 19, 2011, the GOC filed additional information pertaining to the ownership of some producers of wire rod inputs purchased by the respondents.[10]

[1] The petitioners are Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC, and Oklahoma Steel & Wire Company, Inc. (Petitioners).

[2] *See Galvanized Steel Wire From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 76 FR 23564 (April 27, 2011) (*Initiation Notice*), and accompanying Initiation Checklist. Public documents and public versions of proprietary Departmental memoranda referenced in this notice are on file in the Central Records Unit (CRU), Room 7046 in the main building of the Commerce Department.

[3] *See* Memorandum regarding ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Entry Data'' (Entry Data Memorandum), dated April 21, 2011.

[4] *See* Letter from SBZ to the Department, ''Antidumping Duty Investigation of Galvanized Wire from the People's Republic of China: Request for Mandatory Status or Alternatively for Voluntary Status,'' dated May 3, 2011.

[5] *See* Letter from SBZ, *et al.* to the Department, ''Comments on Respondent Selection: Investigation of the Galvanized Steel Wire from the People's Republic of China,'' dated May 4, 2011.

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Mark Hoadley, Program Manager, Office 6, ''Galvanized Steel Wire from the People's Republic of China Countervailing Duty Investigation: Respondent Selection,'' dated May 18, 2011.

[7] Bao Zhang Companies June 27, 2011 Questionnaire Response. As discussed in more detail in the ''Cross-Ownership'' section below, we preliminarily determine that these three companies are cross-owned.

[8] HYW filed its responses as Attachment 1 and then included responses for its reported cross-owned affiliates Tianjin Tianxin Metal Products Co., Ltd. (Tianxin) as Attachment 2, Tianjin Huayuan Times Metal Products Co., Ltd. (Times) as Attachment 3 and Tianjin Mei Jia Hua Trade Co., Ltd. (MJH) as Attachment 4. As discussed in more detail in the ''Cross-Ownership'' section below, we preliminarily determine that HYW, Tianxin and MJH (collectively, the Huayuan Companies), are cross-owned. We also preliminarily determine that Times is not cross-owned with the Huayuan Companies.

[9] GOC July 7, 2011 Questionnaire Response; Huayuan Companies July 7, 2011 Questionnaire Response; and M&M July 7, 2011 Questionnaire Response.

[10] *See* Letter from the GOC to the Department, ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China, Inv. No. C–570–976; Questionnaire Response,'' dated July 19, 2011.

Shandong Hualing, one of the mandatory respondents, did not submit a questionnaire response by the original June 27, 2011 deadline, nor did it request an extension to file its questionnaire response. In fact, the GOC, in its questionnaire response, stated that Shandong Hualing informed the GOC that the company did not plan to cooperate with the Department's investigation.[11] Because Shandong Hualing chose not to participate in this investigation, on July 22, 2011, the Department selected SBZ as an additional mandatory respondent in this investigation.[12] On June 8, 2011, the Department postponed the deadline for the preliminary determination until August 29, 2011.[13]

On July 26, 2011, the Department issued supplemental questionnaires to the Huayuan Companies, M&M and the Bao Zhang Companies. On July 28, 2011, the Department also issued a supplemental questionnaire to the GOC. The Bao Zhang Companies submitted an extension request on August 1, 2011, and the GOC, the Huayuan Companies and M&M submitted extension requests on August 2, 2011.

On August 4, 2011, Department officials met with counsel for the GOC and the Huayuan Companies, regarding the Department's July 26, 2011 supplemental questionnaire issued to the Huayuan Companies.[14] The GOC and the Huayuan Companies expressed concern about the potential burden of obtaining information from trading companies that are the Huayuan Companies' customers. The Department noted the language in the questionnaire regarding trading companies and indicated that when a company is aware that its sales to trading companies were exported to the United States, it should provide the information requested in the questionnaire for exports of subject merchandise to the United States.

On August 4, 2011, the Department extended the deadline for submission of the supplemental questionnaire responses, granting the Huayuan Companies, M&M, and the Bao Zhang Companies an extension for part of their questionnaire response until August 9, 2011, with the remainder due on August 19, 2011. On August 5, 2011, the Department also extended the deadline for the GOC's response, with one portion due on August 11, 2011, and the remainder due on August 22, 2011. The Huayuan Companies, M&M, and the Bao Zhang Companies each filed their supplemental questionnaire responses on August 9, 2011, and August 19, 2011.[15]

The GOC filed its supplemental questionnaire response on August 11, 2011, and August 22, 2011.[16] On August 12, 2011, the Department issued a second supplemental questionnaire to the Huayuan Companies and M&M. The Huayuan Companies and M&M filed responses to these second supplemental questionnaires on August 17, 2011.[17] Finally, on August 25, 2011, the Petitioners filed pre-preliminary determination comments.[18]

Alignment of Final CVD Determination With Final Antidumping Duty Determination

In addition to the CVD investigation on galvanized wire, the Department also initiated antidumping duty (AD) investigations of galvanized wire from the PRC and Mexico.[19] The CVD and AD investigations have the same scope with regard to the merchandise covered.

On August 19, 2011, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final CVD determination with the final AD determination of galvanized wire from the PRC.[20] Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than January 10, 2012, unless postponed.

Scope of the Investigation

The scope of the investigation covers galvanized steel wire which is a cold-drawn carbon quality steel product in coils, of solid, circular cross section with an actual diameter of 0.5842 mm (0.0230 inch) or more, plated or coated with zinc (whether by hot-dipping or electroplating).

Steel products to be included in the scope of the investigation, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.02 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

The products subject to the investigation are currently classified in subheadings 7217.20.30 and 7217.20.45 of the HTSUS which cover galvanized wire of all diameters and all carbon content. Galvanized wire is reported under statistical reporting numbers 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, and 7217.20.4580. These products may also enter under HTSUS subheadings 7229.20.0015, 7229.90.5008, 7229.90.5016, 7229.90.5031, and

[11] *See* GOC July 7, 2011 Questionnaire Response at 1.

[12] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Barbara E. Tillman, Director, Antidumping and Countervailing Duty Operations, Office 6, ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Selection of an Additional Mandatory Respondent,'' dated July 22, 2011.

[13] *See Galvanized Steel Wire From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 76 FR 33242 (June 8, 2011).

[14] *See* Memorandum regarding ''Ex-Parte Meeting with Counsel for the Government of China and for Tianjin Huayuan Wire Metal Products Co., Ltd.: Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China,'' dated August 5, 2011.

[15] Bao Zhang Companies August 9, 2011 Supplemental Questionnaire Response; Huayuan Companies August 9, 2011 Supplemental Questionnaire Response; M&M August 9, 2011 Supplemental Questionnaire Response; Bao Zhang Companies August 19, 2011 Supplemental Questionnaire Response; HYW August 19, 2011 Supplemental Questionnaire Response; Tianxin August 19, 2011 Supplemental Questionnaire Response; Times August 19, 2011 Supplemental Questionnaire Response; MJH August 19, 2011 Supplemental Questionnaire Response; and M&M August 19, 2011 Supplemental Questionnaire Response.

[16] GOC August 11, 2011 Supplemental Questionnaire Response and GOC August 22, 2011 Supplemental Questionnaire Response.

[17] MJH August 17, 2011 Supplemental Questionnaire Response and M&M August 17, 2011 Supplemental Questionnaire Response.

[18] *See* Letter from Petitioners to the Department, ''Countervailing Duty Investigation of Galvanized Steel Wire from the People 's Republic of China: Petitioners' Pre-Preliminary Determination Comments,'' dated August 25, 2011.

[19] *See Galvanized Steel Wire From the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 76 FR 23548 (April 27, 2011).

[20] *See* Letter from Petitioners to the Department ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China—Request to Align Final Determination with Antidumping Investigation,'' dated August 19, 2011.

7229.90.5051. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.[21] Between May 5, 2011, and May 19, 2011, we received numerous comments concerning the scope of the AD investigations of galvanized wire from the PRC and Mexico and the CVD investigation of galvanized wire from the PRC.

Because of the timing of the scope comments and Petitioners' response to the comments, we did not have time to analyze the issues raised by parties prior to this preliminary determination. The Department is currently evaluating these scope comments, and will issue its decision regarding the scope of the investigation no later than the date of the preliminary determination in the companion AD investigation. That decision will be placed on the record of this CVD investigation, and all parties will have the opportunity to comment.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On May 20, 2011, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of galvanized wire from the PRC.[22]

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.[23] In *CFS from the PRC,* the Department found that

> * * * given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China. [24]

The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations.[25]

Additionally, for the reasons stated in the CWP from the PRC 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 for purposes of this investigation.[26]

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2010, through December 31, 2010.[27]

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. For purposes of this preliminary determination, we find it necessary to apply adverse facts available (AFA) in the following circumstances.

Application of AFA: Non-Cooperative Respondent

As explained above in the ''Case History'' section, the Department selected Shandong Hualing as a mandatory respondent. As a result of Shandong Hualing's failure to submit responses to the Department's initial questionnaire, we find the company to be a non-cooperative, mandatory respondent. By not responding to the Department's initial questionnaire, Shandong Hualing withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act, we are basing the CVD rate for Shandong Hualing on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's initial questionnaire, Shandong Hualing did not cooperate to the best of its ability in this investigation. Accordingly, we preliminarily find that AFA is warranted to ensure that the company does not obtain a more favorable result than had it fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [28] 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.'' [29]

It is the Department's practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment

[21] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice,* 75 FR at 70719.

[22] *See Galvanized Steel Wire From China and Mexico,* 76 FR 29266 (May 20, 2011).

[23] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum).

[24] *See* CFS from the PRC Decision Memorandum at Comment 6.

[25] *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 from the PRC Decision Memorandum) at Comment 1.

[26] *See* CWP from the PRC Decision Memorandum at Comment 2.

[27] *See* 19 CFR 351.204(b)(2).

[28] *See, e.g., 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).

[29] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

of the proceeding.[30] In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in the instant proceeding or, if not available, in other PRC CVD proceedings.[31] Thus, under this practice, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, the Department uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.[32]

On this basis, we preliminarily determine the AFA subsidy rate for Shandong Hualing to be 253.07 percent *ad valorem.* For a detailed discussion of the AFA rates selected for each program under investigation, *see* Application of Adverse Facts Memorandum.[33]

Application of AFA: Finding Wire Rod and Zinc Input Producers To Be Government Authorities Under the Provision of Wire Rod and Zinc for Less Than Adequate Remuneration Program

The Department is investigating the alleged provision of wire rod and zinc for less than adequate remuneration (LTAR) by the GOC. We requested information from the GOC regarding the specific companies that produced these input products that the Huayuan Companies and the Bao Zhang Companies purchased during the POI.

With respect to the specific companies that produced the input products purchased by the Huayuan Companies and the Bao Zhang Companies, we were seeking information that would allow us to determine whether the producers are ''authorities'' within the meaning of section 771(5)(B) of the Act. In our original and supplemental questionnaires, we requested detailed information from the GOC that would be needed for this analysis. We informed the GOC that, if it disputed that producers that are majority-owned by the government are ''authorities,'' the GOC needed to provide the requested information on those disputed producers as well. Thus, for any producers of wire rod or zinc that were identified by the Huayuan Companies and the Bao Zhang Companies as majority government-owned, the GOC needed to provide the requested information only if it wished to argue that those producers were not authorities. For any of these input producers that the GOC claimed were privately owned by individuals and/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 discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

Finally, for input producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POI, we requested information in order to trace back the ownership to the ultimate individual or state owners. For these suppliers, we requested the following:

- The identification of any state ownership of the company's shares; the names of all government entities that own shares, either directly or indirectly, in the company; whether any of the owners are considered ''state-owned enterprises'' by the government; and the amount of shares held by each government owner.
- For each level of ownership, a translated copy of the section(s) of the articles of association showing the rights and responsibilities of the shareholders and, where appropriate, the board of directors, including all decision making (voting) rules for the operation of the company.
- For each level of ownership, identification of the owners, members of the board of directors, or managers of the producers 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 of whether any of the shares held by government entities have any special rights, priorities, or privileges, *e.g.,* with regard to voting rights or other management or decision-making for the company; a statement of whether there are any restrictions on conducting, or acting through, extraordinary meetings of shareholders; whether there are any restrictions on the shares held by private shareholders; and the nature of the private shareholders' interest in the company, *e.g.,* operational, strategic, or investment-related, *etc.*

In its questionnaire response on July 7, 2011, the GOC provided some ownership information but reported that it was unable to obtain the complete ownership information for all of the companies that produced wire rod and zinc purchased by the Huayuan Companies and the Bao Zhang Companies. The GOC further stated that it expected to provide such information to the Department as soon as it received it from the local industry and commerce

[30] *See, e.g., Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances,* 73 FR 35639 (June 24, 2008) (*LWS from the PRC*), and accompanying Issues and Decision Memorandum at ''Selection of the Adverse Facts Available''; *see also Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions From the PRC*), and accompanying Issues and Decision Memorandum (Aluminum Extrusions from the PRC Decision Memorandum) at ''Application of Adverse Inferences: Non-Cooperative Companies.''

[31] See supra, note 28; *see also* LWS From the PRC; *see also* Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 73 FR 70971, 70975 (November 24, 2008) (unchanged in the Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at ''Application of Facts Available, Including the Application of Adverse Inferences'').

[32] *See* Aluminum Extrusions from the PRC Decision Memorandum at ''Application of Adverse Inferences: Non-Cooperative Companies''; *see also, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at ''Selection of the Adverse Facts Available Rate.''

[33] *See* Memorandum regarding, ''Application of Adverse Facts Available Rates for Preliminary Determination,'' dated August 29, 2011 (Application of Adverse Facts Memorandum).

administration bureaus.[34] On July 19, 2011, the GOC submitted additional ownership information pertaining to certain wire rod producers, but reported that it was still not able to complete the ownership information for all wire rod and zinc producers named by respondents.

On July 28, 2011, we issued a supplemental questionnaire to the GOC requesting that it complete the remaining ownership information for the wire rod and zinc producers, as well as respond to questions regarding the role, if any, of GOC and CCP officials in the input producers (*e.g.,* through management or the board of directors) and in their owners, including any corporate owners.[35] In response to the GOC's request for an extension, the Department allowed the GOC to file part of its response on August 11, 2011, and the remainder on August 22, 2011.

In the August 11, 2011 response, the GOC provided some additional ownership information; it also stated that certain companies that own some portion of wire rod producers did not have any GOC or CCP officials or representatives involved in their ownership, boards of directors or management.[36] However, the GOC did not provide complete information requested with respect to whether GOC or CCP officials were involved in the ownership, board of directors or management of all of these wire rod producers. The GOC also explained that it was unable to obtain some of the company-specific ownership information for zinc producers and that it was not able to collect information on whether companies holding some share of zinc producers have any GOC or CCP officials involved in their ownership, boards of directors or management.[37]

In addition to not providing all of the requested information regarding whether government and CCP officials were owners, members of the boards of directors, or managers of the input producers who produced the wire rod and zinc purchased by the respondents during the POI, the GOC also declined to answer questions about the CCP's structure and functions that are relevant to our determination of whether the producers of wire rod and zinc are government authorities within the meaning of section 771(5)(B) of the Act.

On August 22, 2011, the GOC filed the remainder of its supplemental questionnaire response but it did not include any additional information regarding whether there were GOC or CCP officials involved in the management, board of directors or ownership of the wire rod or zinc input producers. Rather, the GOC stated that the CCP, along with other organizations, is not a government organization and that CCP officials' involvement in input producer companies ''does not lead to interference by the Chinese government in the management and operation of the input suppliers.'' [38] Additionally, the GOC explained that Chinese law prohibits GOC officials from taking positions in private companies.[39] Furthermore, the GOC explained that ''there is no central database to search the requested information and the industry and commerce administration does not require the companies to provide such information.'' [40] As such, the GOC stated it was unable to respond to the questions regarding GOC and CCP officials' involvement in the wire rod and zinc input producers themselves and in the input producers' ownership and management.[41]

Regarding the GOC's objection to the Department's questions about the role of CCP officials in the management and operations of the wire rod and zinc input producers, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.[42] The Department considers the information regarding the CCP's involvement in the PRC's economic and political structure to be important because public information suggests that the CCP exerts significant control over activities in the PRC.[43] This is supported by, among other documents, a publicly available background report from the U.S. Department of State.[44] 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.[45]

Because the GOC did not respond to our requests for information on this issue, we have no further basis for evaluating the GOC's claim that the role of the CCP is irrelevant. Thus, we continue to find that the information on the role of CCP officials in the management and operations of the wire rod and zinc input producers, and in the management and operations of the input producers' owners is necessary to our determination of whether these input producers are authorities within the meaning of section 771(5)(B) of the Act. Furthermore, we find that this is information that could be obtained by the GOC and further, the GOC did not provide any information regarding what attempts it undertook to obtain this information. Therefore, we determine that the GOC's statement that it is unable to provide this information is insufficient to find that the GOC has cooperated to the best of its ability.

Based on the above, 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.[46] Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.[47] Therefore, based on AFA, we are finding that that all of the input producers of the wire rod and zinc purchased by the respondents during the POI are ''authorities'' within the meaning of section 771(5)(B) of the Act.

Application of AFA: Provision of Electricity for Less Than Adequate Remuneration

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of Section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of Section 771(5)(E) of the Act and whether such a provision was specific with the meaning of Section 771(5A) of the Act. In the both the Department's

[34] *See* GOC July 7, 2011 Questionnaire Response at 16.

[35] *See* Letter from the Department to the GOC ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Supplemental Questionnaire,'' dated July 28, 2011.

[36] *See* GOC August 11, 2011 Supplemental Questionnaire Response at I–13–14, I–16.

[37] *See id.* at I–23.

[38] *See* GOC August 22, 2011 Supplemental Questionnaire Response at I–7–10.

[39] *See id.*

[40] *See id.*

[41] *See id.*

[42] *See* Memorandum regarding ''Galvanized Steel Wire from the People's Republic of China: Preliminary Countervailing Duty Determination: Additional Documents,'' dated August 29, 2011 at Attachment 1.

[43] *See id.* at Attachment 2.

[44] *See 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 from the PRC Decision Memorandum) at Comment 7.

[45] *See* Seamless Pipe from the PRC Decision Memorandum at 16.

[46] *See* sections 776(a)(1) and (a)(2)(A) of the Act.

[47] *See* section 776(b) of the Act.

May 19, 2011 original questionnaire and the July 28, 2011 supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) How increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) 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. The GOC provided no provincial-specific data in its August 11, 2011 supplemental response.

Consequently, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts available'' in making our preliminary determination.[48] 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. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.[49] In drawing an adverse inference, we find 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 have also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.[50] The benchmark rates we have selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.

For details on the calculation of the subsidy rate for the respondents, *see* the ''Provision of Electricity for LTAR'' section below.

Subsidy Valuation Information

Allocation Period

Under 19 CFR 351.524(d)(2), we presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the U.S. Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. According to the IRS' 1977 Class Life Asset Depreciation Range System, the AUL period for assets for galvanized wire is 12 years. No party in this proceeding has disputed this allocation period.

Further, for non-recurring subsidies, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

As discussed above, in accordance with the Department's practice, we identify and measure subsidies in the PRC beginning on the date of the country's accession to the WTO, *i.e.* December 11, 2001.[51]

Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)–(v) sets forth additional attribution rules for corporations with cross-ownership. The following types of cross-ownership are covered in these additional attribution rules: (ii) Two or more corporations with cross-ownership produce the subject merchandise; (iii) a firm that received a subsidy is a holding or parent company of the subject company; (iv) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (v) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

1. Cross-Ownership

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of 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.[52]

Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among and across the following companies involved in the production and sale of the subject merchandise.

The Huayuan Companies

We preliminarily determine that cross-ownership exists within the Huayuan Companies among and across the following companies involved in the production and sale of the subject merchandise: HYW, Tianxin and MJH. Further, we preliminarily determine that cross-ownership does not exist between Times and the other companies in the Huayuan Companies. Because much of the information upon which this decision is based is business proprietary, a full discussion is set forth in the Huayuan Companies Preliminary Cross-Ownership Memorandum.[53]

The Bao Zhang Companies

We preliminarily determine that cross-ownership exists within the Bao Zhang Companies, in accordance with 19 CFR 351.525(b)(6)(vi), among and across the following companies involved in the production and sale of the subject merchandise: SBZ, ABZ and Li Chao. Because much of the information upon which this decision is based is business proprietary, a full discussion is set forth in the Bao Zhang

[48] *See* sections 776(a)(1)–(a)(2)(A) of the Act.

[49] *See* section 776(b) of the Act.

[50] *See id.* at 776(b)(4).

[51] *See, e.g., Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum at ''Subsidies Valuation Information.''

[52] *See Fabrique de Fer de Charleroi* v. *United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001).

[53] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding ''Galvanized Steel Wire from the People's Republic of China: Preliminary Countervailing Duty Determination, Cross-Ownership: Huayuan Companies,'' dated August 29, 2011 (Huayuan Companies Preliminary Cross-Ownership Memorandum).

Companies Preliminary Cross-Ownership Memorandum.[54]

2. Trading Company Attribution

Under 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing company are affiliated. M&M reported that it is a trading company and that it purchased galvanized wire to the United States during the POI from various producers,[55] including the cross-owned producers of galvanized wire within the Huayuan Companies (HYW and Tianxin).[56] M&M reported that it is not cross-owned with any of the producers from which it purchased galvanized wire, and there is no information on the record on the record that would cause the Department to conclude that M&M is cross-owned with any of its suppliers.

When investigating or reviewing trading companies, the Department, has, in some instances, limited the number of producers it examines under 19 CFR 351.525(c).[57] In determining a subsidy rate for M&M, we preliminarily determine that it is appropriate to limit our examination of the producers, which supplied M&M during the POI, to the cross-owned producers within the Huayuan Companies.[58] Since this decision is based on business proprietary information, our analysis is set forth in M&M's preliminary calculation memorandum.[59]

Pursuant to the Department's trading company regulation at 19 CFR 351.525(c), we find that any subsidies provided to the cross-owned producers within the Huayuan Companies are attributable to the subject merchandise exported by M&M. In accordance with 19 CFR 351.525(c), we cumulated the subsidies received by the cross-owned producers within the Huayuan Companies with the subsidies received by M&M. Specifically, for each countervailable subsidy received by the cross-owned producers within the Huayuan Companies, we derived the benefit and calculated a program subsidy rate, and cumulated those rates with the rates calculated for subsidies received directly by M&M.

Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program at issue. As discussed in further detail below in the ''Programs Preliminarily Determined To Be Countervailable'' section, where the program has been found to be an export subsidy, we used the recipient's total exports as the denominator. For cross-owned producers, we used total exports net of sales between the cross-owned producers, and where appropriate and possible, made adjustments for the value of the producers' sales sold through a cross-owned trading company.[60]

Where the program has been found to be countervailable as a domestic subsidy, we used the following denominators. If the subsidy was provided to one or more of the cross-owned producers of subject merchandise, we used the total sales of those producers net of any sales between the cross-owned producers. Where appropriate and possible, we made adjustments for the value of the cross-owned producers' sales sold through a cross-owned trading company. Where the subsidy was provided to a cross-owned input supplier, we used the total sales of the cross-owned producers of subject merchandise plus the sales of the cross-owned input supplier net of any sales between these companies (*i.e.,* we used only external sales as the denominator). Where the subsidy was provided directly to a trading company, we used the trading company's total sales as the denominator.[61] For a further discussion of the denominators used, *see* the Preliminary Calculation Memoranda.[62]

Discount Rates for Allocating Non-Recurring Subsidies

Consistent with 19 CFR 351.524(d)(3)(i)(C), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described below for the year in which the government agreed to provide the subsidy.

1. Short-Term Interest Rate

The Department's regulations at 19 CFR 351.524(d)(3) state that Department will use as a discount rate the following, in order of preference: (A) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Department has determined to be countervailable subsidies; (B) the average cost of long-term, fixed-rate loans in the country in question; or (C) a rate that the Department considers to be most appropriate. For the reasons explained in *CFS from the PRC,* 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.[63] Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as a discount rate under 19 CFR 351.524(d)(3)(i)(A). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.524(d)(3)(i)(A).

Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based

[54] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding ''Galvanized Steel Wire from the People's Republic of China: Preliminary Countervailing Duty Determination, Cross-Ownership: Bao Zhang Companies,'' dated August 29, 2011(Bao Zhang Companies Preliminary Cross-Ownership Memorandum).

[55] *See* M&M July 7, 2011 Questionnaire Response at III–2.

[56] *See* ''Cross-Ownership'' section above.

[57] *See Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review,* 66 FR 64214 (December 12, 2001),and accompanying Issues and Decision Memorandum (Pasta from Italy Decision Memorandum) at ''Attribution''; *see also Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 74 FR 56576, 56577–79 (November 2, 2009) (*PC Strand from the PRC*) (unchanged in the *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at ''Attribution of Subsidies'').

[58] *See* Pasta from Italy Decision Memorandum at ''Attribution''; *see also* PC Strand from the PRC Decision Memorandum at ''Attribution of Subsidies.''

[59] *See* Memorandum to Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: M&M Preliminary Calculation Memorandum,'' dated August 29, 2011 (M&M Preliminary Calculation Memorandum).

[60] *See* 19 CFR 351.525(b)(2), (b)(6), and (c).

[61] *See generally,* 19 CFR 351.525(b).

[62] *See* Memorandum to Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Bao Zhang Companies Preliminary Calculation Memorandum,'' dated August 29, 2011; *see also* Memorandum to Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Huayuan Companies Preliminary Calculation Memorandum,'' dated August 29, 2011; *see also* M&M Preliminary Calculation Memorandum (collectively, Preliminary Calculation Memoranda).

[63] *See* CFS from the PRC Decision Memorandum at Comment 10.

benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[64]

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and updated in *LWTP from the PRC.*[65] This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC,* we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as low income, lower-middle income, upper-middle income, and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.[66] As explained in *CFS from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries 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 ''low middle income'' by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD 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.[67]

2. Long-Term Interest Rate

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 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.[68] In subsequent investigations, 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.[69]

The resulting inflation-adjusted lending rates that we are using as discount rates are provided in the Preliminary Benchmark Memorandum.[70] Based on this methodology, we calculated the discount rates to use in allocating non-recurring subsidies for this preliminary determination.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

Programs Preliminarily Determined To Be Countervailable

1. Provision of Wire Rod for LTAR

The Department is investigating whether input producers, acting as Chinese government authorities, sold wire rod to the respondents for LTAR. Both the Huayuan Companies and the Bao Zhang Companies reported purchasing wire rod during the POI.[71]

As discussed in detail above in the section ''Use of Facts Otherwise Available and Adverse Inferences,'' we are finding all of the wire rod input producers, which produced the wire rod purchased during the POI by both the Huayuan Companies and the Bao Zhang Companies, to be government authorities based on AFA. As a result, we preliminarily determine that the wire rod sold by these input producers that was purchased by the respondents during the POI constitutes a financial contribution in the form of a governmental provision of a good.[72]

Having dealt with financial contribution, we now turn to specificity, one of the three required subsidy elements under the Act.[73] In our initial questionnaire, we asked the GOC to provide a list of industries in the PRC that purchase wire rod directly, using a consistent level of industrial classification.[74] In response, the GOC simply stated that wire rod is used by a wide variety of steel-consuming industries.[75] In our supplemental questionnaire, we again asked the GOC to provide the information in the form requested, but the GOC provided the same response.[76] While the GOC did not provide the information in the form requested, we have considered the GOC's response in light of the statutory standard for *de facto* specificity and, based on our review, we find the information is sufficient to reach a finding of specificity pursuant to section 771(5A)(D)(iii)(I) of the Act. This determination is consistent with wire decking from the PRC and *PC Strand from the PRC* in which the Department found the provision of wire rod to be specific, based on virtually the same facts.[77]

[64] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) and accompanying Issues and Decision Memorandum (Softwood Lumber from Canada Decision Memorandum) at ''Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.''

[65] *See* CFS Decision Memorandum at Comment 10; *see also* LWTP from the PRC Decision Memorandum at 8–10.

[66] *See* The World Bank Country Classification, *http://econ.worldbank.org/.*

[67] *See* Memorandum regarding ''Preliminary Affirmative Countervailing Duty Determination: Galvanized Steel Wire form the People's Republic of China, Benchmark Memorandum,'' dated August 29, 2011 (Preliminary Benchmark Memorandum).

[68] *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.

[69] *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) and accompanying Issues and Decision Memorandum at Comment 14.

[70] *See* Preliminary Benchmark Memorandum at Attachment 8.

[71] *See* Bao Zhang Companies June 27, 2011 Questionnaire Response at III–14; *see also* Huayuan Companies July 7, 2011 Questionnaire Response at I–16, II–16.

[72] *See* section 771(5)(D)(iii) of the Act.

[73] *See* section 771(5A) of the Act.

[74] *See* May 19, 2011 Original Questionnaire at II–7.

[75] *See* GOC July 7, 2011 Questionnaire Response at 34.

[76] *See* GOC August 22, 2011 Supplemental Questionnaire Response at I–14.

[77] *See Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty*

With regard to benefit, the third required subsidy element, we preliminarily determine that the respondents received a benefit to the extent that the purchased wire rod was provided for LTAR.[78] The criteria for identifying appropriate market-determined benchmarks for measuring whether the government-provided goods were provided for LTAR are set forth 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 the Department has previously explained, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[79]

In evaluating whether there are market prices for actual transactions within the country under investigation (*i.e.,* tier one prices), we must first determine whether the prices from actual sales transactions involving PRC buyers and sellers are significantly distorted. As explained in the preamble to the regulations:

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.[80] The preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.[81]

In the original questionnaire, we asked the GOC to provide production figures of wire rod by state-owned enterprises (SOEs) during 2008, 2009 and 2010. The GOC provided information regarding government ownership of wire rod producers during 2008 only. The GOC stated that gathering such information for 2009 and 2010 would ''take months to achieve'' and, thus, it did not provide these figures.[82] We note that the only information relevant to the POI that the GOC provided were statements to the effect that certain pre-existing export restraints (*i.e.,* export licenses and export taxes) for wire rod were not present during the POI. Therefore, the GOC has not provided the necessary or requested information for the Department to undertake a complete analysis regarding the government's role in the market for wire rod during the POI, and it is necessary to resort to the facts otherwise available pursuant to section 776(a) of the Act. As facts become available, we find that PRC prices of wire rod are significantly distorted as a result of the GOC's involvement in the market.[83]

Consequently, we determine that there are no appropriate tier one benchmark prices available for wire rod. Because we determine that there are no available tier one benchmark prices, we have turned to tier two (*i.e.,* world market prices) available to purchasers in the PRC. For purposes of the preliminary determination, we find that the Japanese and Black Sea FOB export price data from the World Bank and Steel Business Briefing (SBB), respectively, should be used to derive a tier two, world market price for wire rod that would be available to purchasers of wire rod in the PRC.[84] We find that, for purposes of the preliminary determination, prices from the World Bank and SBB to be sufficiently reliable and representative. Both sources identify that the prices reported are export prices and that they are on an FOB basis. Such prices would be available to purchasers in the PRC. We adjusted these FOB export prices to reflect, as closely as possible, the price that the respondent firm would pay if it imported the product, including import duties and valued added tax (VAT), ocean freight and domestic inland freight as stipulated in 19 CFR 351.511(a)(2)(iv). Where necessary, we converted the variables in the benchmark calculation to the same currency and unit of measure as reported by the mandatory respondents for their purchases of wire rod.

Some of the respondents have reported acquiring wire rod from trading companies or non-producing suppliers with which they were not cross-owned. In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, but the producer of the input is an ''authority'' within the meaning of section 771(5)(B) of the Act, we must evaluate whether the input has been provided for LTAR by comparing the price paid by the respondent to the trading company to the benchmark price.[85] Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to the respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. As stated previously, the Department has preliminarily determined all input producers of wire rod purchased by the respondents during the POI are authorities.

To determine whether the respondent producers purchased wire rod for LTAR, we compared the unit prices each respondent paid for its wire rod to our wire rod benchmark price. Where the purchase was made from a non-producing cross-owned supplier, we used the price paid by the cross-owned supplier for comparison purposes. We conducted our comparison on a monthly basis. Based on this comparison, we preliminarily determine that wire rod was provided for LTAR and that a benefit exists in the total amount of the difference between the benchmark and the price paid.[86]

Determination, 75 FR 32902 (June 10, 2010) (*Wire Decking from the PRC*), and accompanying Issues and Decision Memorandum (Wire Decking from the PRC Decision Memorandum) at ''Provision of Wire Rod for LTAR''; *see also* PC Strand from the PRC Decision Memorandum at Comment 12.

[78] *See* section 771(5)(E)(iv) of the Act.

[79] *See* Softwood Lumber from Canada Decision Memorandum at ''Market-Based Benchmark.''

[80] *See Countervailing Duties,* 63 FR 65348, 65377 (November 25, 1998).

[81] *See id.*

[82] *See* GOC July 7, 2011 Questionnaire Response at 29.

[83] *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 37012 (July 27, 2009) (*Racks from the PRC*), and accompanying Issues and Decision Memorandum (Racks from the PRC Decision Memorandum) at ''Provision of Wire Rod for Less than Adequate Remuneration''; *see also Wire Decking from the PRC* at ''Provision of Wire Rod for LTAR.'' The POI for *Wire Decking from the PRC* was 2008. The ownership/production for wire rod which the GOC submitted in the instant case is consistent with what it submitted in *Wire Decking from the PRC.* Because the GOC submitted ownership/production information from 2008 in this investigation and statements about wire rod exports during 2010, the Department was prevented from being able to conduct a full analysis.

[84] *See* Preliminary Benchmark Memorandum.

[85] *See* Racks from the PRC Decision Memorandum at ''Provision of Wire Rod for Less than Adequate Remuneration'' section; *see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 4936 (January 28, 2009), and accompanying Issues and Decision Memorandum (CWASPP from the PRC Decision Memorandum) at ''Provision of SSC for LTAR.''

[86] *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

To calculate the subsidy rate, we divided the total benefit to each respondent by the appropriate denominator discussed above in the ''Subsidy Valuation Information'' section, and in the Preliminary Calculation Memoranda. On this basis, we calculated a subsidy of 45.94 percent *ad valorem* for the Huayuan Companies, 19.04 percent *ad valorem* for the Bao Zhang Companies, and 45.94 percent *ad valorem* for M&M.

2. Provision of Zinc for LTAR

The Department is investigating whether input producers, acting as Chinese government authorities, sold zinc to the respondents for LTAR. Both the Huayuan Companies and the Bao Zhang Companies reported purchasing zinc during the POI.[87]

As discussed in detail above in the section ''Use of Facts Otherwise Available and Adverse Inferences,'' we are finding all of the zinc input producers that produced the zinc the Huayuan Companies and the Bao Zhang Companies purchased during the POI to be government authorities based on AFA. As a result, we preliminarily determine that the zinc sold by these input producers that was purchased by the respondents during the POI constitutes a financial contribution in the form of a governmental provision of a good.[88]

Having dealt with financial contribution, we now turn to specificity, one of the three required subsidy elements under the Act.[89] In our initial questionnaire, we asked the GOC to provide a list of industries in the PRC that purchase zinc directly, using a consistent level of industrial classification.[90] In response, the GOC stated that zinc had a wide range of uses (*e.g.,* galvanized steel products, alkaline batteries, various metal alloys, *etc.*) and that ''a comprehensive list of industries that purchase zinc directly is not available to be provided.'' [91] While the GOC did not provide the information in the form requested, we have considered the GOC's response in light of the statutory standard for *de facto* specificity and, based on our review, we find the information is sufficient to reach a finding of specificity pursuant to section 771(5A)(D)(iii)(I) of the Act. This determination is consistent with *Wire Decking from the PRC,* in which the Department found the provision of zinc to be specific, based on virtually the same facts.[92]

With regard to benefit, the third required subsidy element, we preliminarily determine that the respondents received a benefit to the extent that the zinc purchased was provided for LTAR.[93] The criteria for identifying appropriate market-determined benchmarks for measuring whether the government-provided goods were provided for LTAR are set forth at 19 CFR 351.511(a)(2) and discussed above in the ''Provision of Wire Rod for LTAR'' section.

In the original questionnaire, we asked the GOC to provide production figures of zinc by SOEs during 2008, 2009 and 2010. The GOC provided information regarding government ownership of zinc producers during 2008 only. The GOC stated that gathering such information for 2009 and 2010 would ''take months to achieve'' and, thus, it did not provide these figures. We note that the only information relevant to the POI that the GOC provided were statements to the effect that exports of zinc were subject to export licenses and that there is no ''quantitative restriction.'' [94] Therefore, the GOC has not provided the necessary or requested information for the Department to undertake a complete analysis, regarding the government's role in the market for zinc during the POI, and it is necessary to resort to the facts otherwise available pursuant to section 776(a) of the Act. As facts become available, we find that the zinc industry is significantly distorted as a result of the GOC's involvement in the market.[95]

Consequently, we determine that there are no appropriate tier one benchmark prices available for zinc. Because we determine that there are no available tier one benchmark prices, we have turned to tier two (*i.e.,* world market prices) available to purchasers in the PRC. For purposes of the preliminary determination, we find that the data from the World Bank, the International Monetary Fund (IMF) and SBB should be used to derive a tier two world market price for zinc that would be available to purchasers of zinc in the PRC.[96] We find that, for purposes of the preliminary determination, prices from the World Bank, IMF and SBB to be sufficiently reliable and representative. All three sources report London Metal Exchange world market zinc prices. Such prices would be available to purchasers in the PRC. We adjusted these prices to reflect, as closely as possible, the price that the respondent firm would pay if it imported the product, including import duties and VAT, ocean freight and domestic inland freight as stipulated in 19 CFR 351.511(a)(2)(iv). Where necessary, we converted the variables in the benchmark calculation to the same currency and unit of measure as reported by the mandatory respondents for their purchases of zinc.

Some of the respondents have reported acquiring zinc from trading companies or non-producing suppliers with which they were not cross-owned. In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, but the producer of the input is an ''authority'' within the meaning of section 771(5)(B) of the Act, we must evaluate whether the input has been provided for LTAR by comparing the price paid by the respondent to the trading company to the benchmark price.[97] Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the zinc that was subsequently sold to the respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. As stated previously, the Department has preliminarily determined all zinc producers to be government authorities.

To determine whether the respondent producers purchased zinc for LTAR, we compared the unit prices each respondent paid for its zinc to our zinc benchmark price. We conducted our comparison on a monthly basis. Based on this comparison, we preliminarily determine that zinc was provided for LTAR and that a benefit exists in the

[87] *See* Bao Zhang Companies June 27, 2011 Questionnaire Response at III–15; *see also* Huayuan Companies July 7, 2011 Questionnaire Response at I–17.

[88] *See* section 771(5)(D)(iii) of the Act.

[89] *See* section 771(5A) of the Act.

[90] *See* May 19, 2011 Original Questionnaire at II–7.

[91] *See* GOC July 7, 2011 Questionnaire Response at 43.

[92] *See* Wire Decking from the PRC Decision Memorandum at ''Provision of Zinc for LTAR.''

[93] *See* section 771(5)(E)(iv) of the Act.

[94] *See* GOC July 7, 2011 Questionnaire Response at 41.

[95] *See Wire Decking from the PRC* at ''Provision of Zinc for LTAR.'' The POI for *Wire Decking from the PRC* was 2008. The ownership/production for zinc which the GOC submitted in the instant case is consistent with what it submitted in *Wire Decking from the PRC.* The Department is unable to undertake a complete analysis based on ownership/production information from 2008 and the GOC's statements about zinc exports during 2010.

[96] *See* Preliminary Benchmark Memorandum.

[97] *See* Racks from the PRC Decision Memorandum at ''Provision of Wire Rod for LTAR'' section; *see also* CWASPP from the PRC Decision Memorandum at ''Provision of SSC for LTAR.''

total amount of the difference between the benchmark and the price paid.[98]

To calculate the subsidy rate, we divided the total benefit to each respondent by the appropriate denominator discussed above in the ''Subsidy Valuation Information'' section, and in the Preliminary Calculation Memoranda. On this basis, we calculated a subsidy of 1.68 percent *ad valorem* for the Huayuan Companies, 0.08 percent *ad valorem* for the Bao Zhang Companies, and 1.68 percent *ad valorem* for M&M.

3. 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 determination regarding the government's provision of electricity, in part, on AFA.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. The Huayuan Companies, M&M, and the Bao Zhang Companies provided data on the electricity the companies consumed and the electricity rates paid during the POI.[99]

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program. We find that in deciding not to provide the requested information the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act. To determine the existence and amount of any benefit from this program, we relied on the respondents' reported information on the amounts of electricity used during the POI. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (*e.g.,* ''large industrial users'') for the general or peak, normal, and valley ranges, as provided by the GOC.[100] The electricity rate benchmark chart is included in the Preliminary Benchmark Memorandum. This benchmark reflects an adverse inference, which we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

To measure whether the respondents received a benefit under this program, we first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category (*e.g.,* great industry peak, basic electricity, *etc.*) by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category (*e.g.,* great industry peak, basic electricity) by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POI from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POI by summing the monthly benefits for each company.

Certain respondents also reported receiving electricity adjustments, but did not provide any explanation for these adjustments. Absent an explanation, the Department has no basis to consider including these adjustments in our preliminary calculations. The Department will request additional information from respondents regarding these adjustments and, for the final determination, will evaluate whether and how they should be allocated to electricity consumption.

To calculate the subsidy rate pertaining to electricity payments made by the respondents, we divided the benefit amount by the appropriate total sales denominator, as discussed in the ''Subsidy Valuation Information'' section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy of 1.04 percent *ad valorem* for the Huayuan Companies, 2.37 percent *ad valorem* for the Bao Zhang Companies, and 1.04 percent *ad valorem* for M&M.

4. Export Grants From Local Governments

We initiated on a program entitled ''Export Assistance Grants.'' [101] In their questionnaire responses, two of the respondents reported that they had received export assistance grants from local governments, and another reported that it had received grants provided by the local government to assist in the development of export markets or to recognize export performance. Specifically, the Bao Zhang Companies reported that ABZ received: 1) an ''Export Award;'' 2) a ''Foreign Trade Promotion Award;'' and 3) financial assistance for an overseas market survey visit, all from the local Commerce Bureau.[102] The Huayuan Companies reported that MJH received ''international market development'' export assistance grants from the Tianjin Treasure Bureau prior to and during the POI.[103] M&M also reported receiving ''international market development'' export assistance grants from the Beijing Municipal Commission of Commerce during the POI.[104]

All three of ABZ's grants were reported to have been received for activities related to exporting. Regarding MJH's and M&M's grants, both reported that a company that is legally entitled to export may apply for the international market development grant for expenses incurred for visiting overseas clients or participating in overseas exhibitions.[105] Based on information on the record, we find that these grants constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grants, in accordance with 19 CFR 351.504(a). Because the grants were reportedly provided for promoting exports or were otherwise export-related, we preliminarily

[98] *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

[99] *See* Bao Zhang Companies August 9, 2011 Supplemental Questionnaire Response at Exhibit 14; *see also* Huayuan Companies August 9, 2011 Supplemental Questionnaire Response at Exhibit I–S–10, II–S–7; *see also* MJH August 17, 2011 Supplemental Questionnaire Response at 2; *see also* M&M August 17, 2011 Supplemental Questionnaire Response at Exhibit 1.

[100] *See* GOC July 7, 2011 Questionnaire Response at Exhibit 17.

[101] *See Initiation Notice.*

[102] *See* Bao Zhang August 19, 2011 Supplemental Questionnaire Response at I–7.

[103] *See* Huayuan Companies July 7, 2011 Questionnaire Response at IV–III–22–25; *see also* Huayuan Companies August 9, 2011 Supplemental Questionnaire Response at IV–12.

[104] *See* M&M July 7, 2011 Questionnaire Response at III–23 to III–26.

[105] *See* Huayuan Companies July 7, 2011 Questionnaire Response at IV–III–23; *see also* M&M July 7, 2011 Questionnaire Response at III–24.

determine that the grants are specific as export subsidies within the meaning of section 771(5A)(B) of the Act. We intend to further investigate these programs during the remainder of the investigation.

In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), we have performed the ''0.5 percent test,'' for each year in which a grant was provided to ABZ, MJH and M&M. Specifically, for each year in which a grant was received, we divided the total amount of the grants received by each company by the relevant sales values. For those years in which the total amount of the grants exceeded 0.5 percent of the relevant sales in that year, we allocated the grants over time in accordance with 19 CFR 351.524. Otherwise, they were expensed in the year of receipt. To allocate the grants over time, we applied the calculation methodology set forth in 19 CFR 351.524(d), and used the AUL and the discount rates described above in the ''Subsidies Valuation Information'' section. To determine each company's total benefit, we summed the amount of the benefits from each of these grants attributable to the POI.

To calculate the subsidy rate pertaining to these export grants, we divided the total benefit amount by the appropriate export sales denominator, as discussed in the ''Subsidy Valuation Information'' section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy of 0.15 percent *ad valorem* for the Huayuan Companies, 0.09 percent *ad valorem* for the Bao Zhang Companies, and 0.24 percent *ad valorem* for M&M.

5. Exemption From City Construction Tax and Education Tax for Foreign Invested Enterprises

The Bao Zhang Companies reported that ABZ received benefits under the ''Exemption from City Construction Tax and Education Tax for Foreign Invested Enterprises (FIEs)'' program. According to the Bao Zhang Companies, ABZ received an exemption from paying the Urban Maintenance and Construction Tax and Additional Education Fees which are based on the VAT payable by a company every month. The Bao Zhang Companies stated that ABZ qualified for this benefit because it is an FIE. Consistent with our findings in *Aluminum Extrusions from the PRC* and *Racks from the PRC,* we preliminarily determine that the exemptions from the city construction tax and education surcharge under this program confer a countervailable subsidy.[106] The tax exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the tax savings.[107] We also preliminarily determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises (*i.e.* FIEs) and, hence, are specific under section 771(5A)(D)(i) of the Act. To calculate the benefit, we treated ABZ's tax exemptions as recurring benefits, consistent with 19 CFR 351.524(c)(1), as the exemptions are based on the VAT payable by companies every year.

To compute the amount of the benefit under these exemptions, we first determined the rate the companies would have paid in the absence of the program. According to the Bao Zhang Companies, non-FIEs would have to pay one percent of their VAT payable every year for the Urban Maintenance and Construction Tax and three percent of their VAT payable every year for Additional Education Fees.[108] Therefore, we preliminarily determine that, absent these exemptions, ABZ should have paid four percent of its VAT payable for these taxes. Next, we compared the amount the companies would have paid in the absence of the program (four percent of VAT payable during the POI) with the rate the companies paid (zero), because they are FIEs.

To calculate the subsidy rate, we divided the sum of all tax savings, during the POI, by the appropriate sales denominator as discussed above in the ''Subsidy Valuation Information'' section and the Preliminary Calculation Memoranda. On this basis, we preliminarily determine the countervailable subsidy to be 0.01 percent *ad valorem* for the Bao Zhang Companies.

According to the GOC, this program was terminated effective December 1, 2010.[109] While there is sufficient evidence on the record demonstrating that a countervailable subsidy was conferred during the POI, we are unable to determine whether a program-wide change, in accordance with 19 CFR 351.526, with respect to this program has occurred. Specifically, the GOC has not provided information clarifying whether a substitute program has been established to replace this program in accordance with 19 CFR 351.526(d)(2). Therefore, we will request from the GOC additional information necessary to determine whether this program has been terminated. If we find that this program was terminated in accordance with the provisions of 19 CFR 351.526(d), we will adjust the cash deposit rate accordingly for the final determination.

Program Preliminarily Determined Not To Confer a Countervailable Benefit During the POI

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.''[110] To determine whether the GOC provided a benefit under this program, we compared the VAT rebate 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, during the POI, the VAT levied on both wire rod and zinc sales in the domestic market was 17 percent and that the VAT exemption upon the export of galvanized wire was nine percent.[111] Therefore, we find that the VAT exempted upon the export of galvanized wire did not confer a countervailable benefit during the POI because the amount of the VAT rebated on export is lower than the amount paid in the domestic market.

Programs Preliminarily Determined To Be Not Used By Respondents[112]

We preliminarily determine that the participating respondents did not apply for or receive any benefits during the POI under the following programs:

1. Provision of Land Use Rights for LTAR within the Jinzhou District within the City of Dalian.

2. Provision of Land Use Rights for LTAR to Enterprises within the Zhaoqing High-Tech Industry Development Zone in Guangdong Province.

[106] *See* Aluminum Extrusions from the PRC Decision Memorandum at ''Exemption from City Construction Tax and Education Tax for FIEs;'' *see also* Racks from the PRC Decision Memorandum at ''Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province.''

[107] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

[108] *See* Bao Zhang Companies August 9, 2011 Supplemental Questionnaire Response at I–17–18.

[109] *See* GOC July 7, 2011 Questionnaire Response at 74.

[110] *See* 19 CFR 351.517(a); *see also* 19 CFR 351.102(a)(28).

[111] *See, e.g.,* GOC August 22, 2011 Supplemental Questionnaire Response at I–22.

[112] In this section we refer to programs preliminarily determined to be not used by the three participating respondent companies.

3. Provision of Land Use Rights for LTAR to Enterprises within the South Sanshui Science and Technology Industrial Park of Foshan City.
4. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment.
5. Income Tax Exemption for Investment in Domestic Technological Renovation.
6. Accelerated Depreciation for Enterprises Located in the Northeast Region.
7. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China.
8. Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning Province.
9. VAT Deduction on Fixed Assets.
10. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries.
11. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax.
12. ''Five Points, One Line'' Program of Liaoning Province.
13. Provincial Export Interest Subsidies.
14. State Key Technology Project Fund.
15. Subsidies for Development of Famous Export Brands and China World Top Brands.
16. Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands.
17. Zhejiang Province Program to Rebate Antidumping Legal Fees.
18. Technology to Improve Trade Research and Development Fund of Jiangsu Province.
19. Outstanding Growth Private Enterprise and Small and Medium-Sized Enterprises Development in Jiangyin Fund of Jiangyin City.
20. Grants for Programs Under the 2007 Science and Technology Development Plan in Shandong Province.
21. Special Funds for Encouraging Foreign Economic and Trade Development and for Drawing Significant Foreign Investment Projects in Shandong Province.
22. ''Two Free, Three Half'' Tax Exemptions for ''Productive'' FIEs.
23. Income Tax Exemption Program for Export-Oriented FIEs.
24. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs.
25. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises.
26. Income Tax Subsidies for FIEs Based on Geographic Location.
27. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment.
28. Income Tax Credits for FIEs Purchasing Domestically-Produced Equipment.

Programs for Which Additional Information Is Needed

The Department finds that additional information is needed in order to determine whether the following programs are countervailable. After gathering and analyzing the additional information, the Department intends to issue a post-preliminary analysis regarding whether these programs are countervailable.

1. Policy Loans to the Galvanized Wire Industry

The Department initiated on five ''preferential loans and interest rates'' programs: (1) Policy Loans to the Galvanized Steel Wire Industry; (2) Preferential Loans for Key Projects and Technologies; (3) Preferential Loans and Directed Credit; (4) Preferential Lending to galvanized wire Producers and Exporters Classified as ''Honorable Enterprises;'' and (5) Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program.[113] Only the Bao Zhang Companies reported outstanding loans from banks during the POI. The Bao Zhang Companies reported that SBZ received loans from banks that were outstanding during the POI, but that neither of these banks are state-owned commercial banks.[114] In the supplemental questionnaire, we requested that the GOC provide information regarding the ownership of these two banks. In its August 22, 2011 supplemental questionnaire response, the GOC states that, for one of the banks, state ownership accounted for less than one percent of the total shares of the bank. For the other bank, the GOC states that a ''state-owned legal person'' accounted for over 70 percent of the ownership of the bank during the POI.[115] Because the fact that these loans may be from government-owned or controlled banks was provided only in the August 22, 2011 supplemental questionnaire response, the Department has not had sufficient time to request additional information about the nature of these loans nor to assess whether these loans are countervailable. Therefore, the Department needs additional information to determine whether the loans received by SBZ constitute a countervailable subsidy.

2. Zhabei District ''Save Energy Reduce Emission Team'' Award

In response to questions in our supplemental questionnaires to the respondent companies regarding income items listed in their financial statements, the Bao Zhang Companies reported, in their August 19, 2011 supplemental questionnaire response, that SBZ received a ''Save Energy Reduce Emission Team'' award in 2010.[116] The Bao Zhang Companies stated that the financial award was given by the Zhabei District to SBZ for successfully renovating its coal burning oven into a vacant (vacuum) oven, saving energy and reducing emissions.[117] This information was provided too late for the Department to issue questions to both the GOC and the Bao Zhang Companies concerning this program. As such, we are unable to reach a preliminary determination regarding the countervailability of this program for the preliminary determination.

Verification

In accordance with section 782(i)(1) of the Act, the Department will verify the information submitted by the Huayuan Companies, M&M, the Bao Zhang Companies, and the GOC prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for subject merchandise produced and exported by the entities individually investigated. We have also calculated an all-others rate. Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, the three calculated rates can be used to calculate the all-others rate. Therefore, we have assigned the weighted-average of these three calculated rates as the all-others rate. We preliminarily determine the

[113] *See Initiation Notice,* 76 FR at 23567.
[114] *See* Bao Zhang Companies July 7, 2011 Questionnaire Response at III–10.
[115] *See* GOC August 22, 2011 Supplemental Questionnaire Response at I–3.
[116] *See* Bao Zhang Companies August 19, 2011 Supplemental Questionnaire Response at I–10.
[117] *See id.*

total estimated countervailable subsidy rates to be:

Company	Subsidy rate
Tianjin Huayuan Metal Wire Products Co., Ltd.; Tianjin Tianxin Metal Products Co., Ltd.; and Tianjin Mei Jia Hua Trade Co., Ltd. (collectively, the Huayuan Companies).	48.81 percent *ad valorem.*
M&M Industries Co., Ltd.	48.90 percent *ad valorem.*
Shanghai Bao Zhang Industry Co., Ltd.; Anhui Bao Zhang Metal Products Co., Ltd.; and Shanghai Li Chao Industry Co., Ltd. (collectively, the Bao Zhang Companies).	21.59 percent *ad valorem.*
Shandong Hualing Hardware and Tool Co., Ltd.	253.07 percent *ad valorem.*
All Others Rate	44.46 percent *ad valorem.*

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the 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. We will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d). Any such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm, by telephone, the date, time, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–22715 Filed 9–2–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–866]

Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of bottom mount combination refrigerator-freezers (bottom mount refrigerators) from the Republic of Korea (Korea).

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Justin M. Neuman or Myrna L. Lobo, 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) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On April 19, 2011, the Department initiated a countervailing duty (CVD) investigation of bottom mount refrigerators from Korea.[1] In the *Initiation Notice,* the Department set aside a period for all interested parties to raise issues regarding product coverage. The comments we received are discussed in the ''Scope Comments'' section below.

In the *Initiation Notice,* the Department identified Samsung

[1] *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Initiation of Countervailing Duty Investigation,* 76 FR 23298 (April 26, 2011) (*Initiation Notice*). The petitioner in this investigation is Whirlpool Corporation.

Electronics Co., Ltd. (SEC) and LG Electronics, Inc. (LGE) as respondents in this investigation. As we noted in the *Initiation Notice,* it is the Department's usual practice to rely on import data from U.S. Customs and Border Protection (CBP) to select respondents in CVD investigations. However, because the Harmonized Tariff Schedule of the United States (HTSUS) categories under which bottom mount refrigerators may be entered are basket categories, which include many other types of refrigerators and freezers, we could not rely on CBP data. Because the petition identified SEC and LGE as the only producers in Korea that exported bottom mount refrigerators to the United States, and because we knew of no other producers that exported subject merchandise to the United States, we initially selected for examination the respondents that were identified in the petition. However, we invited interested parties to comment on our respondent selection within five days of the publication of the initiation notice (*i.e.,* by May 2, 2011).

We received no comments regarding our selection of SEC and LGE within the period designated in the *Initiation Notice*. However, on May 9, 2011, subsequent to the comment period, the petitioner requested that Daewoo Electronics Corporation (DWE) be included as a respondent in the instant CVD investigation. The petitioner made this request because, separately, on the last day of the comment period, DWE made a submission in the parallel antidumping duty (AD) investigation identifying itself as an exporter and producer of the subject merchandise and requesting that it be designated as a mandatory respondent in the AD investigation, in addition to LGE and SEC. The petitioner stated that, if DWE's request to be included in the AD investigation was granted, the Department should also include DWE in the CVD investigation. The petitioner argued that a foreign producer should not be permitted to choose to participate in the AD investigation but not in the companion CVD investigation, which would allow DWE to take full advantage of the AD analysis of cost reductions associated with subsidies.[2] On May 10, 2011, DWE submitted a letter stating that the Department should reject the petitioner's request. On May 13, 2011, the petitioner submitted a second letter emphasizing that the statute directs the Department to investigate all known producers and exporters and affords the Department no discretion to do otherwise. The petitioner argued that the Department, having concluded in the AD investigation that three known producers is not an impracticably large number, must reach the same conclusion in the CVD investigation.

On May 18, 2011, the Department decided to include DWE in the CVD investigation, consistent with the statutory requirement under section 777A(e)(1) of the Tariff Act of 1930, as amended (the Act), which directs the Department to determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.[3]

On May 9, 2011, the Department issued the CVD questionnaire (including government and company sections) to the Government of Korea (GOK). On May 18, 2011, the Department provided a copy of the questionnaire to DWE. In the initial questionnaire, we requested that certain information from company respondents regarding affiliation and cross-ownership be submitted prior to the response to the remainder of the questionnaire. On May 23, 2011, SEC submitted the first part of its questionnaire response (SEC Initial Questionnaire Response Part 1). LGE submitted the first part of its questionnaire response on June 1, 2011 (LGE Initial Questionnaire Response Part 1). DWE submitted the first part of its questionnaire response on June 1, 2011 (DWE Initial Questionnaire Response Part 1). On June 14, 21, and 23, 2011, the Department issued supplemental questionnaires to SEC, LGE, and DWE, respectively. On July 1, 5, and 7, 2011, responses to these questionnaires were submitted by DWE, SEC, and LGE, respectively.

On June 29, 2011, SEC and LGE submitted the remainder of their questionnaire responses (SEC Initial Questionnaire Response Part 2 and LGE Initial Questionnaire Response Part 2, respectively); the GOK also submitted its questionnaire response on this day (GOK Initial Questionnaire Response). On July 7, 2011, DWE submitted the remainder of its questionnaire response (DWE Initial Questionnaire Response Part 2).

On June 2 and 9, and July 12 and 14, 2011, the Department received comments from the petitioner regarding these questionnaire responses. On July 26, 2011, the Department issued supplemental questionnaires to SEC, LGE, and DWE. Responses to these questionnaires were received on August 9, 2011 (SEC Supplemental Questionnaire Response Part 1; LGE Supplemental Questionnaire Response Part 1; and DWE Supplemental Questionnaire Response, respectively). On August 19 and 23, 2011, respectively, SEC and LGE submitted the second part of their responses. On August 1, 2011, the Department issued a supplemental questionnaire to the GOK (GOK Supplemental Questionnaire). A response to this questionnaire was received on August 15, 2011 (GOK Supplemental Questionnaire Response). On August 22, 2011, the petitioner submitted comments on the responses to these questionnaires for the Department's consideration. On August 23, SEC submitted comments related to the calculation of its *ad valorem* subsidy rate for the purposes of this preliminary determination. On August 29, 2011, LGE filed comments in response to the petitioner's August 23, 2011 submission.

On July 15, 2011, the Department received new subsidy allegations from the petitioner. On August 16, 2011, we issued our decision to initiate on eight of these newly alleged subsidy programs, to defer initiation on two programs, and not to initiate on one program.[4] On August 29, 2011, we issued questionnaires related to the new subsidy allegations to the respondents and to the GOK. The programs on which we initiated include equity infusions through debt-to-equity conversions and preferential lending provided by the GOK to DWE, as well as additional tax deductions, loans, and grant programs available to companies in specific sectors or industries. Because we will not receive responses to these questionnaires until after the preliminary determination, an analysis of whether these programs are countervailable will be provided in a post-preliminary analysis, and the parties will have an opportunity to comment on our analysis.

On June 3, 2011, the Department postponed the preliminary determination until August 27, 2011. However, since that date is a Saturday, the Department stated that its

[2] The Department included DWE as a mandatory respondent in the AD investigation. *See* ''Memorandum to the File from David M. Goldberger, Inclusion of Daewoo as Mandatory Respondent,'' dated May 9, 2011.

[3] *See* ''Memorandum from Myrna L. Lobo to Barbara E. Tillman, Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Inclusion of Daewoo as a Mandatory Respondent,'' dated May 18, 2011.

[4] *See* ''Memorandum from Dana S. Mermelstein to Barbara E. Tillman, Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: July 15, 2011 New Subsidy Allegations,'' dated August 16, 2011 (''NSA Initiation Memorandum'').

determination would be issued on the next business day, August 29, 2011.[5]

Alignment of Final CVD Determination With Final AD Determination

On the same day the Department initiated this CVD investigation, the Department also initiated AD investigations of bottom mount refrigerators from Korea and Mexico.[6] The CVD investigation and the AD investigations have the same scope with regard to the merchandise covered. On August 22, 2011, in accordance with section 705(a)(1) of the Act, the petitioner requested alignment of the final CVD determination with the final AD determination of bottom mount combination refrigerators from Korea. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than January 9, 2012, unless postponed.

Injury Test

Because Korea is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On May 23, 2011, the 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 imports from Korea of subject merchandise.[7]

Scope of the Investigation

The products covered by the investigation are all bottom mount combination refrigerator-freezers and certain assemblies thereof from Korea.

For purposes of the investigation, the term ''bottom mount combination refrigerator-freezers'' denotes freestanding or built-in cabinets that have an integral source of refrigeration using compression technology, with all of the following characteristics:

- The cabinet contains at least two interior storage compartments accessible through one or more separate external doors or drawers or a combination thereof;
- The upper-most interior storage compartment(s) that is accessible through an external door or drawer is either a refrigerator compartment or convertible compartment, but is not a freezer compartment;[8] and
- There is at least one freezer or convertible compartment that is mounted below the upper-most interior storage compartment(s).

For purposes of the investigation, a refrigerator compartment is capable of storing food at temperatures above 32 degrees F (0 degrees C), a freezer compartment is capable of storing food at temperatures at or below 32 degrees F (0 degrees C), and a convertible compartment is capable of operating as either a refrigerator compartment or a freezer compartment, as defined above.

Also covered are certain assemblies used in bottom mount combination refrigerator-freezers, namely: (1) Any assembled cabinets designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) a back panel, (c) a deck, (d) an interior plastic liner, (e) wiring, and (f) insulation; (2) any assembled external doors designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation; and (3) any assembled external drawers designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation.

The products subject to the investigation are currently classifiable under subheadings 8418.10.0010, 8418.10.0020, 8418.10.0030, and 8418.10.0040 of the Harmonized Tariff System of the United States (HTSUS). Products subject to the investigation may also enter under HTSUS subheadings 8418.21.0010, 8418.21.0020, 8418.21.0030, 8418.21.0090, and 8418.99.4000, 8418.99.8050, and 8418.99.8060. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, in our *Initiation Notice,* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.[9] We received a number of comments concerning the scope of the AD and CVD investigations of bottom mount refrigerators from Korea.

Timely comments were filed by SEC on May 9, 2011, requesting that the Department alter the scope language by adopting the Association of Home Appliance Manufacturers (AHAM) definition of combination refrigerator-freezer. Specifically, according to SEC, the AHAM definition would more accurately define a ''freezer'' in accordance with industry standards as a compartment which is ''designed for the freezing and storage of frozen foods at temperatures of 8 degrees F (−13.3 degrees C) average or below, and typically capable being adjusted by the user to a temperature of 0 degrees F (−17.8 degrees C) or below.''[10] SEC also requested that the Department determine that a certain type of refrigerator with four compartments known as ''Quatro Cooling Refrigerators'' be excluded from the scope of the investigations due to its upper left non-convertible freezer compartment.[11] On May 18 and 19, 2011, respectively, LGE and DWE indicated their support for SEC's preference for using the industry definition of ''freezer.''[12] LGE also requested that the Department amend the scope language by using the AHAM definition to exclude refrigerators referred to as ''kimchi refrigerators'' that are incapable of hard-freezing foods (*i.e.,* storing foods at a temperature of 8 degrees F (−13.3 degrees Celsius)).[13] On May 18, 2011, the petitioner filed comments objecting to SEC's request to

[5] *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 76 FR 32142 (June 3, 2011).

[6] *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 76 FR 23281 (April 26, 2011).

[7] *See Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico,* 76 FR 29791 (May 23, 2011); and USITC Publication 4232 entitled Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico: Investigation Nos. 701–TA–477 and 731–TA–1180–1181 (Preliminary) (May 2011).

[8] The existence of an interior sub-compartment for ice-making in the upper-most storage compartment does not render the upper-most storage compartment a freezer compartment.

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997), and *Initiation Notice,* 76 FR at 23299.

[10] *See* ''Letter to Secretary Locke from Samsung Electronics Co., Ltd., Re: Bottom Mount Combination Refrigerator-Freezers from Korea and Mexico: Scope Exclusion Request and Scope Comments,'' dated May 9, 2011, at Attachment 2.

[11] *See id.*

[12] *See* ''Letter to Secretary Locke from LG Electronics Inc., Re: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea and Mexico: Rebuttal Comments on Product Characteristics and Scope of the Investigation,'' dated May 18, 2011 at 2–3, and ''Letter to Secretary Locke from Daewoo Electronics Corporation, Re: Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from Korea; Rebuttal Comments on Scope,'' dated May 19, 2011.

[13] *See id.*

narrow the scope language by using the AHAM definition and also opposing SEC's request to exclude Quatro Cooling Refrigerators.[14] On June 30, 2011, the petitioner also filed comments opposing LGE's request to exclude kimchi refrigerators.[15] On June 30, officials from Whirlpool Corporation, along with counsel, met with Department officials to explain why kimchi refrigerators are covered under the scope of the investigations and why there should be no scope exclusion for this type of merchandise.[16] On July 25, 2011, SEC submitted further comments explaining why it believes SEC's Quatro models are outside the scope of the investigations.

The Department is currently evaluating these scope comments, and will issue its decision regarding the scope of the investigations no later than the date of the preliminary determination in the companion AD investigation. That decision will be placed on the record of this CVD investigation, and all parties will have the opportunity to comment.

Period of Investigation

The period for which we are measuring subsidies, *i.e.,* the period of investigation (POI), is January 1, 2010, through December 31, 2010.

Subsidies Valuation Information

Cross-Ownership and Attribution of Subsidies

The Department's regulations state that cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of other corporation(s) in essentially the same ways it can use its own assets.[17] This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

The preamble to the Department's regulations further clarifies the Department's cross-ownership standard.[18] According to the preamble, relationships captured by the cross-ownership definition include those where the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (including subsidy benefits) of the other corporation in essentially the same way it can use its own assets (including subsidy benefits). The cross-ownership standard does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a ''golden share'' may also result in cross-ownership.[19]

As such, the Department's regulations make it clear that we must examine the facts presented in each case in order to determine whether cross-ownership exists. In accordance with 19 CFR 351.525(b)(6)(iv), if the Department determines that the suppliers of inputs primarily dedicated to the production of the downstream product are cross-owned with the producers/exporters under investigation, the Department will attribute the subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

SEC has reported a cross-ownership relationship with its subsidiary Samsung Gwangju Electronics Co., Ltd. (SGEC), the producer of bottom mount refrigerators subject to this investigation. We have examined the relationship to determine whether it meets the definition of cross-ownership such that we will identify, measure, and attribute subsidies granted to the cross-owned companies to the entity exporting subject merchandise.

As reported by SEC,[20] during the POI, SGEC produced various home appliances including bottom mount refrigerators. At that time, SGEC was 94.25 percent owned by its parent company, SEC. The physical assembly of the refrigerators was performed by SGEC, which also executed production plans in accordance with the sales plans provided by SEC, in addition to establishing input supply arrangements, and paying input suppliers. SGEC sold the vast majority of bottom mount refrigerators to SEC, which was responsible for sales in the domestic and export markets; SGEC did not retain any inventory. SEC performed all other refrigerator-related functions, including sales planning for the domestic and export markets; marketing, research and development; engineering and design; and finalization of specifications of raw material inputs. SEC also reported that effective January 1, 2011, after the POI, SGEC was merged into SEC.

Based on the information provided by SEC, we conclude that SGEC and SEC are cross-owned within the definition provided in 19 CFR 351.525(b)(6)(vi). SGEC was virtually wholly-owned by SEC during the POI, and therefore SEC was able to ''use and direct the individual assets of'' SGEC in ''essentially the same ways it can use its own assets.''[21] Furthermore, SEC was intrinsically involved with the production, sales, and marketing of the subject merchandise. As such, for purposes of this preliminary determination, we are examining subsidies to both SGEC, the producer of subject merchandise, and to SEC, its parent company. Consistent with 19 CFR 351.525(b)(6)(i), we are attributing the subsidies to the products produced by the corporation that received the subsidy. Therefore subsidies provided directly to SGEC are attributable to SGEC's total sales. In addition, consistent with 19 CFR 351.525(b)(6)(iii) we are attributing the subsidies conferred on SEC to SEC's consolidated sales, which include all of SGEC's sales.[22]

Cross-Ownership With Input Suppliers

The petitioner has alleged that SEC, LGE, and DWE have relationships with their input suppliers that meet the definition of cross-ownership provided in 19 CFR 351.525(b)(6)(vi). Specifically, large companies exercise control over the actions of small and medium-sized enterprises (SMEs) that provide inputs to the large companies, an important feature of what is known as the chaebol system in Korea.[23] As a result of the petitioner's contention that SEC, LGE, and DWE are in a position to exercise effective control over their input suppliers, ''to use the suppliers' assets as though they were its own, and have the ability to effectively dictate the

[14] *See* ''Letter to Secretary Locke from Whirlpool Corporation, Re: Bottom Mount Combination Refrigerator-Freezers from the Republic of South Korea and Mexico; Petitioner's Rebuttal Comments on Product Scope and Product Characteristics,'' dated May 18, 2011.

[15] *See* ''Letter to Secretary Locke from Whirlpool Corporation, Re: Bottom Mount Combination Refrigerator-Freezers from Mexico and the Republic of Korea,'' dated June 30, 2011.

[16] *See* ''Memorandum to the File from Brandon Custard, Re: Meeting with Petitioner on Scope and Kimchi Refrigerators,'' dated July 6, 2011; *see also* ''Memorandum to the File from David Goldberger, Re: Addendum to July 6 Memo on Scope Issues Meeting with Petitioner,'' dated July 19, 2011.

[17] *See* 19 CFR 351.525(b)(6)(vi).

[18] *See Countervailing Duties,* 63 FR 65347, 65401 (November 25, 1998) (preamble).

[19] *See id.*

[20] *See* SEC Initial Questionnaire Response Part 1 at 1–2.

[21] *See* 19 CFR 351.525(b)(6)(vi).

[22] *See* preamble at 65402.

[23] *See* the petition, dated March 30, 2011 at 33–35.

essential terms of trade,'' [24] the petitioner has urged the Department to investigate subsidies provided to the input suppliers and to attribute those subsidies to respondents.

We are examining whether the respondent companies are cross-owned with their suppliers, and whether the inputs supplied are primarily dedicated to the production of the downstream product. In our initial questionnaire, we requested that the respondents identify all of their input suppliers, any suppliers that are affiliated in accordance with section 771(3) of the Act, and any suppliers that are cross-owned in accordance with 19 CFR 351.525(b)(6)(vi).[25] Further, we asked them to describe in detail the nature of the relationships with their suppliers, including whether they are sole suppliers, whether there is a supply or purchase agreement, and whether there are financial relationships beyond the purchase or sale of goods.

In response, the respondents identified hundreds of input suppliers.[26] SEC and DWE reported that none of those suppliers were cross-owned in accordance with 19 CFR 351.525(b)(6)(vi). LGE, however, reported several input suppliers as being cross-owned, but stated that the inputs provided by these suppliers were not primarily dedicated to the production of bottom mount refrigerators. In supplemental questionnaires, we asked additional questions about the companies' relationships with their suppliers, their supply agreements, and whether the inputs supplied account for a majority of the suppliers' business. We also requested additional information to assess whether the inputs were primarily dedicated to the production of the downstream product. The responses to these questionnaires provided additional information about the relationships with suppliers and the supply agreements.

We issued additional supplemental questionnaires on July 26, 2011, to SEC, LGE, and DWE asking more detailed questions regarding family relationships, and common board members and managers between the respondents and their suppliers. DWE provided its response on August 9, 2011; SEC and LGE provided the responses to these questions on August 18 and August 23, 2011, respectively. We have not had sufficient opportunity to evaluate these questionnaire responses prior to this preliminary determination, and we have not requested questionnaire responses from the suppliers at this time. We will continue to examine the information submitted regarding the relationships between the respondent companies and their suppliers. If we conclude that there is sufficient information that the respondents may be in a position to use and control the assets of their input suppliers as though they were their own, as provided in 19 CFR 351.525(b)(6)(vi), and that the inputs they supply may be primarily dedicated to the production of the downstream product, then we will request the information we deem necessary to determine whether input suppliers received countervailable subsidies that are attributable to the production of subject merchandise in accordance with 19 CFR 351.525(b)(6)(iv). The Department will issue a post-preliminary analysis on this issue in sufficient time for the parties to submit comments for the final determination.

Benchmark Interest Rate for Short-Term Loans

Section 771(5)(E)(ii) of the Act states 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,'' indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient ''could actually obtain on the market'' the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department ''may use a national average interest rate for comparable commercial loans,'' pursuant to 19 CFR 351.505(a)(3)(ii). For the ''Korea Development Bank (KDB) and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables'' program, an analysis of any benefit conferred by loans from KDB or IBK to the respondents requires a comparison of interest actually paid to interest that would have been paid using a benchmark interest rate.[27]

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government-provided short-term loan program, the preference would be to use a company-specific annual average of interest rates of comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. LGE has reported receiving KDB and IBK short-term loans. LGE also reported receiving loans from commercial banks that are comparable commercial loans within the meaning of 19 CFR 351.505(a)(2)(i). We preliminarily determine that the information provided by LGE about its commercial loans satisfies the preference expressed in 19 CFR 351.505(a)(2)(iv). As such, we have used LGE's commercial loans to calculate a benchmark interest rate that represents a company-specific annual average interest rate.[28]

SEC also received loans under the KDB and IBK short-term loan program. However, SEC/SGEC has not provided information about comparable commercial loans that would provide an appropriate basis for an interest rate benchmark. Pursuant to 19 CFR 351.505(a)(3)(ii), where a firm has not reported comparable commercial loans during the POI, the Department may use a national average interest rate for comparable commercial loans. In this instance, the GOK also did not provide usable information regarding national average interest rates. Because no such data were available, we relied on appropriate published sources for information regarding average commercial short-term interest rates to select benchmark interest rates to measure the benefit to SEC/SGEC from the KDB and IBK loans.[29]

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or

[24] *See* the petitioner's June 2, 2011 submission, ''Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Submission of Further Evidence in Reply to Response of Samsung Electronics Co., Ltd.,'' at 5.

[25] *See* Initial Questionnaire at Section III. Question I.A.

[26] *See* Samsung Initial Questionnaire Response Part 1 at Exhibit 2; LGE Initial Questionnaire Response Part 1 at Exhibit 2; DWE Initial Questionnaire Response Part 1 at Exhibit 2.

[27] *See* 19 CFR 351.505(a)(1).

[28] *See* ''Memorandum to the File from Justin M. Neuman, Re: Calculations for LG Electronics Inc.,'' dated August 29, 2011.

[29] *See* ''Memorandum to the File from Myrna Lobo, Re: Calculations for Samsung Electronics Co., Ltd./Samsung Gwangju Electronics Co., Ltd.,'' dated August 29, 2011 (SEC/SGEC Calculation Memorandum).

industry under investigation. Specifically, the party must establish that the difference between the AUL shown in the tables and the company-specific AUL, or the country-wide AUL for the industry under investigation, is significant, pursuant to 19 CFR 351.524(d)(2)(i) and (ii). For assets used to manufacture bottom mount refrigerators, the IRS tables prescribe an AUL of 10 years. Neither the respondents nor the GOK has disputed the AUL of 10 years in this investigation. Therefore, the Department is using an AUL of 10 years in this investigation.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Korea Development Bank (KDB) and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables

The petitioner alleges that the GOK, through two government-owned policy banks, KDB and IBK, provided support to producers of bottom mount refrigerators by offering short-term export financing in the form of discounted Documents against Acceptance (D/A).

According to the GOK, KDB and IBK operate both D/A and ''open account export transaction'' (O/A) financing. These types of financing are designed to meet the needs of KDB and IBK clients for early receipt of discounted receivables prior to their maturity. In a D/A transaction, the exporter first loads contracted goods for shipment as per the contract between the exporter and the importer, and then presents the bank with the bill of exchange and the relevant shipping documents specified in the draft to receive a loan from the bank in the amount of the discounted value of the invoice, repayable when the borrower receives payment from its customer. In an O/A transaction, the exporter effectively receives advance payment on its export receivables by selling them to the bank at a discount prior to receiving payment by the importer. The exporter pays the bank a ''fee'' that is effectively a discount rate of interest for the advance payment. In this arrangement, the bank is repaid when the importer pays the bank directly the full value of the invoice; the exporter no longer bears the liability of non-payment from the importer.

Only LGE and SEC reported using this program during the POI. Because receipt of D/A and O/A loans is contingent upon export performance, we determine that D/A and O/A loans from KDB and IBK are specific within the meaning of sections 771(5A)(A) and (B) of the Act. The Department finds that D/A and O/A loans from KDB and IBK constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, we determine that such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent of the difference between the amount of interest 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.

LGE reported having D/A loans outstanding during the POI on exports of subject merchandise to the United States. To calculate the benefit for LGE, for each KDB and IBK loan, we compared the amount of interest paid on the KDB and IBK loans to the amount of interest that would be paid on a comparable commercial loan in accordance with 19 CFR 351.505(a).[30] Where the interest actually paid on the KDB and IBK loans was less than the interest that would have been payable at the benchmark rate, the difference is the benefit. We summed all of the individual loan benefits and divided the difference by the company's exports of subject merchandise to the United States during the POI. On this basis, we preliminarily determine the countervailable subsidy to LGE under this program to be less than 0.005 percent *ad valorem.* Therefore, in accordance with the Department's practice, we find that the countervailable benefit to LGE is not measurable.[31]

Although SEC reported using the program, it stated that these were not loans and that it did not pay interest. Rather SEC stated that it paid ''negotiation fees'' and it reported the fees it paid during the POI on a monthly basis. SEC did not provide information about individual loans. However, the GOK did provide information about all the loans KDB and IBK had provided to SEC that were outstanding during the POI.

Because SEC did not provide information on its comparable commercial short-term loans, we calculated the benefit for SEC from the loans it received on an O/A basis during the POI by comparing the amount of interest paid on the KDB and IBK loans, as reported by the GOK, to the amount of interest that would have been paid using a benchmark selected according to the hierarchy discussed in the ''Benchmark Interest Rate for Short-Term Loans'' section, above.[32] Because these loans are made on a discounted basis (*i.e.,* interest is paid up-front at the time the loans are received), where necessary, we converted the nominal short-term interest rate benchmark to an effective discount rate. We compared the interest paid by SEC, as reported by the GOK, to the interest payments, on a loan-by-loan basis, that SEC would have paid at the benchmark interest rate. Where the actual interest paid was less than the interest that would have been payable at the benchmark rate, the benefit is the difference. We then summed the differences for each loan and divided this aggregate benefit by the company's total export sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to SEC/SGEC under this program to be 0.01 percent *ad valorem.*

B. Restriction of Special Taxation Act (RSTA) Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities

According to the petitioner, corporations making investments in one of four ''energy economizing facilities,'' are eligible for a tax deduction of 20 percent of such expenses in a taxation year; SMEs qualify for a tax deduction of 30 percent.

According to the GOK, this program was introduced in the Korean tax code in the predecessor of the RSTA to facilitate Korean corporations' investments in the energy utilization facilities.[33] The underlying rationale for the introduction and maintenance of the program is that the enhancement of energy efficiency in the business sectors may help enhance the efficiency in the general national economy. The eligible types of facilities are identified in Article 22(2) of the RSTA. The statutory basis for this program is Article 25(2) of the RSTA, Article 22(2) of the Enforcement Decree of the RSTA, and Article 13(2) of the Enforcement Regulation of RSTA.

Under the program, the GOK explained that corporations that have made investments in facilities to enhance energy utilization efficiency or produce renewable energy resources, in accordance with the RSTA decree and regulation, are entitled to a credit

[30] *See* ''Subsidies Valuation Information'' section, above.

[31] *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review,* 74 FR 20923 (May 6, 2009) (*HRS from India*), and the accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[32] *See* the SEC/SGEC Calculation Memorandum.

[33] *See* GOK Initial Questionnaire Response at 246 of the Appendices Volume.

toward taxes payable in the amount of 10 percent of the eligible investment. Once it is established that the requirements under the laws and regulations are satisfied, the provision of support under this program is automatic. If a company is in a tax loss situation in a particular tax year, the company is permitted to carry forward the applicable credit under this program for five years. The relevant tax law pertaining to loss carry-forward is Article 144(1) of the RSTA. The GOK agency that administers this program is the Ministry of Strategy and Finance. SEC and SGEC both claimed credits under this program on their tax returns filed during the POI. LGE and DWE did not claim the tax credits available under this program on their tax returns filed during the POI.

In its response, the GOK provided the 2010 Statistical Yearbook of National Tax which provides the number of corporate taxpayers that claimed tax credits under Article 25(2). This information demonstrates that the actual recipients of tax credits under this program are limited in number. Therefore, this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. This program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed. Consistent with 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii), to calculate the benefit to SEC from the tax credits used by SEC and SGEC, for each corporate entity, we divided the tax credit claimed under this program during the POI by each company's total sales during the POI. We added together the two resulting rates to preliminarily determine a countervailable subsidy that is less than 0.005 percent *ad valorem.* Therefore, in accordance with the Department's practice, we find that the countervailable benefit is not measurable.[34]

C. RSTA Article 26 Tax Deduction for Facilities Investment

The petitioner alleges that the GOK provides direct support to producers of bottom mount refrigerators investing in facilities by allowing a tax deduction of 10 percent of the total investment amount. Although the Department had found this program not countervailable in a past case,[35] the petitioner provided new information in the petition [36] to indicate that benefits under this tax deduction program are *de facto* specific because recipients of the tax deduction are limited in number on an enterprise or industry basis, or because an enterprise or industry is a predominant user of the program or receives a disproportionately large amount of the benefit.[37] Therefore, in the *Initiation Notice* and the accompanying CVD Investigation Initiation Checklist, we determined that it was appropriate to investigate this program because evidence in the petition indicated *de facto* specificity may exist.

In the initial questionnaire, we asked the GOK to describe the program, and to provide the relevant laws authorizing the program. In addition, we asked for information relating to the number of recipient companies and industries that used the tax program, as well as the amount of assistance provided. The GOK reported that the program does not provide a deduction from taxable income, but allows companies to take a credit toward taxes payable of seven percent of eligible investments in facilities. The GOK provided the relevant law authorizing the credit, Article 26 of the RSTA, as well as the implementing law, Article 23 of the Enforcement Decree of the RSTA. According to the GOK, eligible investments are determined by presidential decree.[38] The GOK response indicated that although Article 26 of the RSTA specifies a 10 percent credit toward taxes payable, the 10 percent is a cap on the total amount of the credit; the actual tax credit is prescribed in Article 23(4) of the Enforcement Decree of the RSTA as seven percent.[39] In addition, the GOK provided data showing the total number of corporations that received the tax credit during the POI, as well as the total value of the credits taken. The GOK also reported that it ''does not compile the data of recipients in terms of sectors or industries.'' However, SEC reported that only ''{c}ompanies which are located outside the Seoul Metropolitan Area (SMA) are eligible'' for the tax credit provided by this program.[40]

Therefore, in the GOK Supplemental Questionnaire, we asked the GOK to confirm whether this tax credit is limited to companies outside the SMA, and that investments made within the SMA are not eligible for this program. In its response, the GOK confirmed that tax credits under Article 26 of the RSTA are, in fact, limited to the investment of a corporation in facilities located outside the ''Overcrowding Control Region'' of the SMA. The GOK further confirmed that corporate investments in facilities located within the Overcrowding Control Region of the SMA are not eligible for credits under this tax program.[41] The GOK explained that the copy of the text of Article 23(1) of the Enforcement Decree of the RSTA that it submitted as part of the GOK Initial Questionnaire Response inadvertently omitted the lines referring to the regional limitation on eligibility. The GOK submitted a complete translation of Article 23(1) of the Enforcement Decree of the RSTA, which confirmed that eligibility for the tax credit under Article 26 is limited to investments made outside the Overcrowding Control Region of the SMA.

Because information provided by the GOK indicates that the tax credits under this program are limited by law to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy, we preliminarily find that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act.[42] The tax credits are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount of taxes that it would have paid in the absence of this program,

[34] *See, e.g., HRS from India* and the accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[35] *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea,* 68 FR 37122 (June 23, 2003), and the accompanying Issues and Decision Memorandum (*DRAMS Final Determination*).

[36] *See* Exhibits C–8–FF and C–8–GG in the March 30, 2011 petition.

[37] *See* section 771(5A)(D)(iii)(I)–(III) of the Act.

[38] *See* GOK Initial Questionnaire Response at 203–4 of the Appendices Volume. In addition, the GOK explained that the term ''presidential decree'' refers to the Enforcement Decree of the RSTA. *See* GOK Supplemental Questionnaire Response.

[39] *See* GOK Initial Questionnaire Response at 204–5 of the Appendices Volume.

[40] *See* SEC Initial Questionnaire Response Part 2 at Exhibit 13.

[41] *See* GOK Supplemental Questionnaire Response at 29.

[42] *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001) and the accompanying Issues and Decision Memorandum at the ''Provision of Electricity for Less than Adequate Remuneration'' section (where eligibility for a program was limited to users outside the Bangkok metropolitan area, we found the subsidy to be regionally specific under section 771(5A)(D)(iv) of the Act).

effectively, the amount of the tax credit, pursuant to 19 CFR 351.509(a)(1).

LGE, SEC, and SGEC reported receiving tax credits under Article 26 of the RSTA during the POI. DWE did not receive tax credits under the program. For LGE, we divided the benefit, the tax credit claimed by LGE under this program during the POI, by the company's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy provided to LGE under this program to be 0.05 percent *ad valorem.* Consistent with 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii), to calculate the countervailable subsidy from the tax credits used by SEC and SGEC, for each corporate entity, we divided the benefit, the tax credit claimed under this program during the POI, by each company's total sales during the POI. We added together the two resulting rates to preliminarily determine a countervailable subsidy of 0.32 percent *ad valorem* for SEC/SGEC.

D. Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Tax Exemptions

The petitioner alleges companies that newly establish or expand facilities within industrial complexes in Gwangju are exempt from acquisition and registration taxes. In addition, the petitioner states that capital gains on the land and buildings of such companies are exempt from property taxes for the first five years from the establishment or expansion of the facilities, and receive a 50 percent reduction of such taxes over the next three years.

According to the GOK, under Article 276 of the Local Tax Act, companies that newly establish or expand facilities within an industrial complex are exempt from property, acquisition, and registration taxes. Further, capital gains on the land and buildings of such companies are exempt from property taxes for five years from the establishment or expansion of the facilities. DWE reported that because it was exempt from paying property tax, it also received an additional exemption on the local education tax.[43] The GOK reported that, although Article 276 is a national program, it is administered at the local level by the Gwangju City government. The GOK provided the relevant sections of the City Tax Exemption and Reduction Ordinance of Gwangju City which shows Article 276 is administered by the Gwangju City government.

The Department has previously determined that the tax exemptions under Article 276 of the Local Tax Act are countervailable subsidies.[44] There is no new information or evidence of changed circumstances that warrants the reconsideration of that determination. Only SGEC and DWE reported receiving these exemptions. We preliminarily find that the tax exemptions received by SGEC and DWE constitute a financial contribution and confer a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Further, we preliminarily determine that the tax exemptions are regionally specific under section 771(5A)(D)(iv) of the Act because Article 276 of the Local Tax Act specifies that eligibility for the exemptions is limited to companies located within designated industrial complexes in Korea.

Because they are triggered by a single event, the purchase of property, we consider the exemptions from acquisition and registration taxes to provide non-recurring benefits, in accordance with 19 CFR 351.524(b). For each year over the 10-year AUL period (the POI, 2010, and the prior nine years), in which a respondent claimed exemptions from acquisition and registration taxes, we examined the exemptions claimed to determine whether they exceeded 0.5 percent of the company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt. For both SGEC and DWE, none of the exemptions claimed over the AUL period met the prerequisite for allocation over time, and the only benefits attributable to the POI are those benefits received during the POI.

The exemptions from real property tax provided under this program are recurring benefits, because the taxes are otherwise due annually, and the exemption is granted for a five-year period. Thus, the benefit is allocated to the year in which it is received.[45] The benefit to each company during the POI is the value of the real property tax exempted during the POI. Although DWE reported receiving an additional exemption of the education tax, we have not included the amount of that exemption during the POI in our benefit calculation. We will gather additional information about this exemption from the GOK and the respondents in order to conduct a full analysis for the final determination.

Both SGEC and DWE reported that, as a result of their exemption from acquisition and registration taxes, they are subject to an additional tax under the Act on Special Rural Development. This tax is assessed at 20 percent of the value of the acquisition and registration tax exemption. SGEC and DWE contend that this additional tax should be treated as an offset to the real property tax exemption and subtracted from the exemption the Department recognizes as a benefit. We have examined the assessment of the Special Rural Development Tax in light of the provisions of section 771(6) of the Act, which limits the circumstances under which the Department may subtract an amount from the countervailable benefit to amounts related to application fees, to the loss of value of the subsidy from a deferral required by the government, and to any export taxes imposed by the government specifically to offset CVDs imposed by the United States. We find that the Special Rural Development Tax does not meet the statutory requirement to be recognized by the Department as an offset to the countervailable exemption of acquisition and registration taxes. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit, the Department does not consider the tax consequences of the benefit.

To calculate the countervailable subsidy from the three tax exemptions provided under this program to SGEC and to DWE, for each company, we added the value of exemptions of acquisition and registration tax received during the POI to the value of exemptions of real property tax received during the POI. We divided the resulting benefit by each company's total sales during the POI. On this basis we determine a countervailable subsidy of 0.01 percent *ad valorem* for SEC/SGEC[46] and 0.01 percent *ad valorem* for DWE.

E. Gyeongsangnam Province Production Facilities Subsidies: Tax Reductions and Exemptions

According to the petitioner, eligible companies moving to Changwon that meet certain criteria can receive a 50 percent reduction in corporate taxes for five years, a 100 percent reduction on property taxes for five years, and a full

[43] *See* DWE Initial Questionnaire Response Part 2 at 5 and Exhibit D–2.

[44] *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination,* 72 FR 60639 (October 25, 2007) and the accompanying Issues and Decision Memorandum at 12. *See also Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review,* 75 FR 55745 (September 15, 2010), final results unchanged.

[45] *See* 19 CFR 351.524(a).

[46] *See* 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(b)(6)(iii).

exemption from land acquisition and registration taxes.

The GOK explained that, under Article 276 of the Local Tax Act, companies that newly establish or expand facilities within an industrial complex are exempt from property, acquisition, and registration taxes. Further, capital gains on the land and buildings of such companies are exempt from property taxes for five years from the establishment or expansion of the facilities. The GOK reported that although Article 276 is a national program, it is administered at the provincial or local level, as appropriate. In this instance, according to the GOK, because Changwon City is not a metropolitan city, it does not have the authority to administer the provisions of the Local Tax Act; therefore, the program is administered by the Province of Gyeongsangnam. The GOK provided the relevant sections of the Province of Gyeongsangnam Ordinance Tax Reduction and Exemption, Ordinance No. 3470, which shows that Article 276 is administered by the Province of Gyeongsangnam. LGE reported receiving tax exemptions under this program.

The Department has previously determined that the tax exemptions under Article 276 of the Local Tax Act are countervailable subsidies.[47] There is no new information or evidence of changed circumstances which would warrant reconsideration of that determination. We preliminarily find that the tax exemptions received by LGE constitute a financial contribution and confers a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Further, we preliminarily determine that the tax exemptions are regionally specific under section 771(5A)(D)(iv) of the Act because Article 276 of the Local Tax Act specifies that eligibility for the exemptions is limited to companies located within designated industrial complexes in Korea.

Because they are triggered by a single event, the purchase of property, we consider the exemptions from acquisition and registration taxes to provide non-recurring benefits, in accordance with 19 CFR 351.524(b). For each year over the 10-year AUL period (the POI, 2010, and the prior nine years), in which LGE claimed exemptions from acquisition and registration taxes, we examined the exemptions claimed to determine whether they exceeded 0.5 percent of the company's sales in that year to determine whether the benefits should be allocated over time or to the year of receipt. None of the exemptions LGE claimed over the AUL period met the prerequisite for allocation over time, and the only benefits attributable to the POI are those benefits received during the POI.

The exemptions from real property tax provided under this program are recurring benefits, because the taxes are otherwise due annually, and the exemption is granted for a five-year period. Thus, the benefit is allocated to the year in which it is received.[48] The benefit to LGE during the POI is the value of the real property tax exempted during the POI.

To calculate the countervailable subsidy rate for LGE, we divided the sum of all taxes exempted during the POI by LGE's total sales on an FOB basis during the POI. On this basis we determine a countervailable subsidy that is less than 0.005 percent *ad valorem*. Therefore, in accordance with the Department's practice, we find that the countervailable benefit is not measurable.[49]

II. Programs Preliminarily Determined To Be Not Countervailable

A. Gyeongsangnam Province and Korea Energy Management Corporation Energy Savings Subsidies

The petitioner alleges that Gyeongsangnam Province and the Korea Energy Management Corporation (KEMCO) provided grants as incentives to local companies that adopt energy savings technologies to reduce overall energy consumption. As support for its allegation, the petitioner provided information indicating that benefits under the program were only available to four ''strategic industries,'' including the ''Smart Home Industry,'' which includes home appliances such as refrigerators.

Each of the respondents reported that they did not receive any benefits under this program.[50] The GOK reported that Gyeongsangnam Province is not associated with the management of this program.[51] Furthermore, the GOK stated that the program alleged by the petitioner is actually a program providing loans to fund the replacement of existing energy-consuming facilities. The GOK identified both SEC and LGE as having received loans under the program.[52] Funds for this loan financing are provided by the ''Energy Savings Fund'' (ESF). KEMCO is responsible for the actual administration of the program in accordance with the ''Energy Use Rationalization Act,'' and disbursements from the fund are completed through independent financial institutions. Companies applying for disbursements under the fund first submit an application to KEMCO for financing; on the application the company will designate a bank through which it prefers to receive the financing once the application is approved. Once the application is approved by KEMCO, a recommendation letter is addressed to the designated bank. Applicant companies then submit a loan application to the bank, along with the recommendation letter from KEMCO; if approved, KEMCO transfers funds to the bank which uses them to extend financing to the applicant company.

In addition to providing the description of the program, the GOK notes that the Department has previously investigated this program and found it not countervailable, in the *DRAMS Final Determination.* In that investigation, the program was referred to as the ''ESF Program.'' In the *DRAMS Final Determination,* we determined that the ESF Program was a widely available program seeking to promote goals not specific to any industries or companies and that it was ''used by a significant number of companies in a wide range of industries,'' and was therefore not *de facto* specific.[53]

According to section 775(1) of the Act, if, in the course of a proceeding, the Department discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a CVD petition, then the Department shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding. As explained above, we have previously found this program to be not countervailable. However, because we examined whether the subsidies provided under the program were *de facto* specific to producers of DRAMS in the *DRAMS Final Determination,* and because the ESF loans outstanding during the POI are new loans granted to the respondents since the *DRAMS Final Determination*

[47] *See supra* note 44.

[48] *See* 19 CFR 351.524(a).

[49] *See, e.g., HRS from India* and the accompanying Issues and Decision Memorandum at ''Exemption from the CST.''

[50] *See* LGE Initial Questionnaire Response Part 2 at 23, SEC Initial Questionnaire Response Part 2 at III–20, DWE Initial Questionnaire Response Part 2 at 26.

[51] *See* GOK Initial Questionnaire Response at 186 of the Appendices Volume.

[52] *See* GOK Supplemental Questionnaire Response at 25.

[53] *See DRAMS Final Determination,* and the accompanying Issues and Decision Memorandum at 34.

in 2003, the facts underlying the Department's previous decision that the program is not specific are no longer applicable. Therefore, the Department is examining whether this program is *de facto* specific to producers/exporters of bottom mount refrigerators during the POI.[54]

In the GOK Initial Questionnaire Response, the GOK provided data regarding the total number of companies, by industry, that received financing under this program, as well as the total amount disbursed to each industry.[55] The data provided by the GOK demonstrate that, within the meaning of sections 771(5A)(D)(iii)(I)–(III) of the Act, the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are not limited in number; and that no enterprise or industry is a predominant user of the subsidy or receives a disproportionately large amount of the subsidy. In addition, there is no evidence that demonstrates that the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.[56]

Because loans provided under this program are neither *de jure* nor *de facto* specific, we continue to find this program to be not countervailable within the meaning of section 771(5) of the Act.

III. Programs Preliminarily Determined Not to Confer a Benefit During the POI

A. Research, Supply, or Workforce Development Investment Tax Deductions for ''New Growth Engines'' Under RSTA Article 10(1)(1)

According to information provided by the petitioner, large corporations making research, supply, or workforce development investments in any of 10 ''new growth engine'' technologies qualify for a tax deduction of 20 percent of such expenses in a taxation year; SMEs qualify for a tax deduction of 30 percent. The petitioner has provided information indicating that these ''new growth engines'' include certain technologies related to the production of subject merchandise, such as LED.

The GOK has provided information showing that this program was first introduced in 2010, through the amendment of the RSTA, for the purpose of facilitating Korean corporations' investments in their respective research and development activities relating to the New Growth Engine program. The statutory basis for this program is Article 10(1)(1) of the RSTA. Paragraph 1 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(1) of the RSTA and Appendix 7 of the Enforcement Decree sets forth a list of eligible technologies that are covered by the New Growth Engine program.

Because this program came into existence in 2010, any benefits from this program would not be realized until the tax returns for 2010 are filed in 2011. In accordance with 19 CFR 351.509(b)(1), we recognize tax benefits as having been received the date that the recipient would otherwise have had to pay the taxes. Normally, this date will be the date on which the firm filed its tax return. The first time the tax benefits available under this program could be claimed is on the return for the 2010 tax year, which was filed in 2011. Therefore, we preliminarily determine that this program did not provide countervailable benefits to the respondents during the POI.

B. Research, Supply, or Workforce Development Expense Tax Deductions for ''Core Technologies'' Under RSTA Article 10(1)(2)

According to information provided by the petitioner, large corporations making research, supply, or workforce development investments in any of 18 ''core technologies'' qualify for a tax deduction of 20 percent of such expenses in a taxation year; SMEs qualify for a tax deduction of 30 percent. These ''core technologies'' include certain technologies related to the production of subject merchandise.

The GOK has provided information showing that this program was first introduced in 2010, through the amendment of the RSTA, for the purpose of facilitating Korean corporations' investments in their respective research and development activities relating to core technologies covered by the New Growth Engine program.[57] The program is designed to facilitate the research and development (R&D) activities within the context of the New Growth Engine program. The program offers a credit toward taxes payable with respect to certain costs of personnel and equipment falling under the eligible category. The statutory basis for this program is Article 10(1)(2) of the RSTA. Paragraph 2 of Article 9 of the Enforcement Decree is the implementing provision of Article 10(1)(2) of the RSTA and Appendix 8 of the Enforcement Decree sets forth a list of core technologies that are covered by the New Growth Engine program.

Because this program came into existence in 2010, any benefits from this program would not be realized until the tax returns for 2010 are filed in 2011. In accordance with 19 CFR 351.509(b)(1), we recognize tax benefits as having been received the date that the recipient would otherwise have had to pay the taxes. Normally, this date will be the date on which the firm filed its tax return. The first time the tax benefits available under this program could be claimed is on the return for the 2010 tax year, which was filed in 2011. Therefore, we preliminarily determine that this program did not provide countervailable benefits to the respondents during the POI.

IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the respondents did not apply for or receive benefits during the POI under the following programs:

A. KEXIM Programs

1. *Korean Export-Import Bank (KEXIM) Export Factoring.*

KEXIM export factoring is a form of trade finance under which KEXIM provides short-term discounted loans against the trade receivables of Korean exporters resulting from open account transactions such as D/A. These loans are provided by KEXIM on a non-recourse basis, meaning that KEXIM, and not the exporter, assumes the risk of loss with respect to purchaser default. Although LGE and SGEC reported using this program during the POI, they both reported that their use of the program was unrelated to subject merchandise.[58]

2. *KEXIM Short-Term Export Credit.*

3. *KEXIM Export Loan Guarantees.*

4. *KEXIM Trade Bill Rediscounting Program.*

B. Korea Trade Insurance Corporation (K–SURE)—Export Insurance and Export Credit Guarantees

1. *Short-Term Export Insurance.*

The Korean Export Insurance Corporation (KEIC) was established pursuant to the Export Insurance Act of 1968 for the purpose of providing export insurance. KEIC became K–SURE during the POI. Among the services provided by K–SURE is a short-term export

[54] *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Countervailing Duty Administrative Review,* 76 FR 22868 (April 25, 2011), and the accompanying Issues and Decision Memorandum at 9.

[55] *See* GOK Initial Questionnaire Response at 193–196 of the Appendices Volume.

[56] *See* section 771(5A)(D)(iii)(III) of the Act.

[57] *See* GOK Initial Questionnaire Response at 231 of the Appendices Volume.

[58] *See* LGE Initial Questionnaire Response Part 2 at Exhibit 18B, and SEC Supplemental Questionnaire Response Part 1 at S2–3.

insurance program. Under this program, insurance policies issued to Korean companies through this program provide protection from risks such as payment refusal and buyer's breach of contract. Claims are paid from the Export Insurance Fund, which is managed by K–SURE and is funded by contributions from the GOK and insurance premium payments paid by the private sector companies electing export insurance coverage. K–SURE determines premium rates by considering numerous factors, including the creditworthiness of the importing party and the term of the policy. LGE, SEC, and DWE reported electing short-term export insurance provided by K–SURE during the POI. However there were no benefits provided on exports of subject merchandise to the United States during the POI.

2. *Export Credit Guarantees.*

C. Gwangju Metropolitan City Programs

1. *Relocation Grants.*
2. *Facilities Grants.*
3. *Employment Grants.*
4. *Training Grants.*
5. *Consulting Grants.*
6. *Preferential Financing for Business Restructuring.*
7. *Interest Grants for the Stabilization of Management Costs.*
8. *''Special Support'' for Large Corporate Investors.*
9. *Research and Development and Other Technical Support Services.*

D. Changwon City Subsidy Programs

1. *Relocation Grants.*
2. *Employment Grants.*
3. *Training Grants.*
4. *Facilities Grants.*
5. *Grant for ''Moving Metropolitan Area-Base Company to Changwon''.*
6. *Preferential Financing for Land Purchase.*
7. *Financing for the Stabilization of Business Activities.*
8. *Special Support for Large Companies.*

E. Other GOK Programs

1. Targeted Facilities Subsidies through Korea Finance Corporation (KoFC), KDB, and IBK ''New Growth Engines Industry Fund''.
2. *GOK Green Fund Subsidies.*

V. Programs for Which Additional Information Is Needed

On August 16, 2011, the Department included eight new subsidy allegations as part of the investigation.[59] On August 29, 2011, the Department issued a questionnaire to the GOK and to the respondents regarding these programs. Because there has not been sufficient time to receive responses regarding these new subsidy allegations, we have not included any analysis of these programs in this preliminary determination. The Department will provide a post-preliminary analysis of these programs, and all parties will have an opportunity to comment. The programs for which we need additional information are:

A. DWE Restructuring

1. *GOK Equity Infusions under the DWE Workout.*
2. *GOK Preferential Lending under the DWE Workout.*

B. Tax Reduction for Research and Manpower Development: RSTA Article 10(1)(3)

C. GOK Subsidies for ''Green Technology R&D'' and Its Commercialization

D. IBK Preferential Loans to Green Enterprises

E. Support for ''Green'' Partnerships with SMEs

F. GOK 21st Century Frontier R&D Program/Information Display R&D Center Program

G. Gwangju ''Photonics Industry Promotion Project'' (PIPP) Product Development Support

In addition, we deferred an examination of the following two programs, which are limited to SMEs, at this time. Although we found that the petitioner has made proper allegations based on reasonably available information, we have not yet decided whether there is sufficient information to determine that the respondents' SME input suppliers are cross-owned, and that the inputs they supply are primarily dedicated to the production of the downstream product, such that benefits to SME input suppliers could be attributable to the respondents within the meaning of 19 CFR 351.525(b)(6)(iv). However, we will continue to gather information to examine whether SME input suppliers are cross-owned with respondents, and whether the inputs provided are primarily dedicated to the downstream product.

H. IBK SME Supplier Support

I. Korea Electronics Technology Institute (KETI) ''Marketing Aid'' and ''Product Development'' Support for Gwangju Digital Convergence Promotion Product

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the GOK and the respondents prior to making our final determination.

Preliminary Negative Determination

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated separate subsidy rates for SEC/SGEC, LGE, and DWE, the three producers/exporters of the subject merchandise. The total countervailable subsidy rate for each of these respondents is *de minimis.* These rates are summarized in the table below:

Manufacturer/exporter	Subsidy rate
Samsung Electronics Co., Ltd./Samsung Gwangju Electronics Co., Ltd	0.34 *ad valorem* (*de minimis*).
LG Electronics Inc.	0.05 *ad valorem* (*de minimis*).
Daewoo Electronics Corporation	0.01 *ad valorem* (*de minimis*)

Because all of the rates are *de minimis,* we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of bottom mount refrigerators in Korea. As such, we will not direct U.S. Customs and Border Protection to suspend liquidation of entries of bottom mount refrigerators from Korea.

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

[59] *See* NSA Initiation Memorandum.

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)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. We will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d). Any such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm, by telephone, the date, time, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–22716 Filed 9–2–11; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before October 6, 2011.

FOR FURTHER INFORMATION CONTACT: Gary Martinaitis, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5209; FAX: (202) 418–5527; e-mail: *gmartinaitis @cftc.gov* and refer to OMB Control No. 3038–0013.

SUPPLEMENTARY INFORMATION:

Title: Exemptions from Speculative Limits (OMB Control No. 3038–0013). This is a request for extension of a currently approved information collection.

Abstract: Commission regulations 1.47, 1.48, and 150.3(b) require limited information from traders whose commodity futures and options positions exceed federal speculative position limits. The regulations are designed to assist in the monitoring of compliance with speculative position limits adopted by the Commission. These regulations are promulgated pursuant to the Commission's rulemaking authority contained in Sections 4a(a), 4i, and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

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 the referenced CFTC regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published on June 22, 2011 (76 FR 36525).

Burden statement: The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Regulations (17 CFR)	Estimated number of respondents	Reports annually by each respondent	Total annual responses	Estimated number of hours per response	Annual burden
Rule 1.47 and 1.48	7	2	14	3	42
Part 150	2	1	2	3	6

There are no capital costs or operating and maintenance costs associated with this collection.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0013 in any correspondence.

Gary Martinaitis, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: August 30, 2011.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–22637 Filed 9–2–11; 8:45 am]

BILLING CODE P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2011–0058]

Toy Safety Standard: Strategic Outreach and Education Plan

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') is announcing the development of a strategic outreach and education plan to help the business community and other stakeholders learn about testing and certification requirements for children's toys and toy chests and their compliance with ASTM International's (formerly the American Society for Testing and Materials) (''ASTM'') *Standard Consumer Safety Specification for Toy Safety,* F 963–08 (''ASTM F 963–08''), and section 4.27 (toy chests) from ASTM International's F 963–07ε1 version of the standard (''ASTM F 963–07ε1''). We describe the plan and invite public comment on how we might improve the plan.

DATES: Written comments must be submitted no later than October 21, 2011.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0058, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through www.regulations.gov.

Written Submissions

Submit written submissions in the following way:

Mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in [six] copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

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

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Neal S. Cohen, Small Business Ombudsman, Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504–7504; e-mail: *ncohen@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 20, 2011, the Commission voted to approve publication of a ''notice of requirements'' that would establish the criteria and process for the CPSC's acceptance of accreditation of third party conformity assessment bodies (commonly referred to as ''laboratories'') for testing, pursuant to ASTM International's (formerly the American Society for Testing and Materials) (''ASTM'') *Standard Consumer Safety Specification for Toy Safety,* F 963–08 (''ASTM F 963–08''), and section 4.27 (toy chests) from ASTM International's F 963–07ε1 version of the standard (''ASTM F 963–07ε1''). (For simplicity, we will refer to both standards as the ''toy safety standard'').

The issuance of the ''notice of requirements'' by the Commission means that manufacturers of children's toys must ensure that covered toys are tested for compliance with the toy safety standard by an accredited third party laboratory whose accreditation is accepted by the CPSC. The ''notice of requirements'' also means that based on the results of the third party testing, toy manufacturers must issue a written children's product certificate that certifies the compliance of each covered toy to the toy safety standard. The Commission will enforce these third party testing and certification requirements beginning with those covered toys manufactured after December 31, 2011.

Given the likely impact on those who manufacture or import toys that are covered by the toy safety standard, we believe that it is important to engage in a strategic outreach and education plan to the business community and other stakeholders. An effective outreach and education plan will target the affected group of stakeholders and give the small business community and other stakeholders clear and detailed information to enable them to plan and act accordingly and make more informed and timely business decisions.

This notice describes our outreach and education plan. We intend to make information on our plan and on the toy safety standard available at: *http://www.cpsc.gov/toysafety* by September 30, 2011.

We envision three stages for this strategic outreach and education plan:

- Stage 1 will inform stakeholders generally about the need to test and certify to the toy safety standard. We plan to use traditional and social media to communicate the toy safety requirements and the effective compliance date of January 1, 2012. In addition, staff will target relevant trade publications, industry organizations, consumer groups, and others to ensure that the communications message is disseminated widely and to solicit additional outreach ideas and targets. The Small Business Ombudsman will publish a plain English guide on the requirements. Additionally, we hope that the publication of this document in the **Federal Register** may elicit additional suggestions and ideas.
- Stage 2 will provide detailed ''Frequently Asked Questions'' (''FAQs'') and examples so that stakeholders can better understand the requirements and staff's interpretations of certain provisions before the requirements go into effect. We believe that issuing FAQs in a timely fashion will allow the small business community and other stakeholders to plan and act accordingly to make more informed and timely business decisions. Traditionally, we have used FAQs as a means of explaining new regulations and requirements; however, we are also exploring other means of illustrating the toy safety requirements, such as instructional videos and webinars.
- Stage 3 will begin after we have developed the materials to educate stakeholders. We will target our ongoing education campaign efforts to promote higher rates of compliance with the toy standard and the testing and certification requirements. We will attend industry trade shows, as funding permits, and make presentations about the new requirements. In addition, we will attend international meetings, conferences, trade shows, and other public forums, as funding permits, where we will speak about the new requirements and serve as a resource for companies seeking additional information. Because many small

businesses have modest or nonexistent travel budgets, we will also host webinars for identified target groups. All webinars will be free of charge and will be posted publicly on the CPSC website.

Through this notice, we invite public comment on the following questions:

1. What is the most effective way to identify stakeholders in the industry to whom we should direct our outreach efforts for the toy safety standard? Please identify ideas and specific stakeholders and their contact information, if known.

2. What are the most useful and effective education and communication tools that we can use to communicate and explain the new requirements of the toy safety standard?

3. What are the relevant trade groups and other organizations that can help communicate these new requirements to their members and others? Please identify individual groups and organizations and provide contact information, if known.

4. What are the appropriate trade magazines and other publications targeted to toy manufacturers and others, including retailers, in the toy industry? We are interested particularly in medium- and small-size publications that target individual toy makers and crafters, such as those making wooden toys. Please identify publications and provide contact information, if known.

5. What are the local, national, and international trades shows that target toy manufacturers and others in the toy industry? Please identify trade shows and dates and provide contact information, if known.

6. What other stakeholders or groups should we target in our outreach and education efforts? Please identify and provide contact information, if known.

7. What are other suggestions for successful implementation of the new requirements?

Interested parties should submit comments to *http://www.regulations.gov*, as described in the **ADDRESSES** portion of this document.

Dated: August 30, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–22603 Filed 9–2–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel; Amended Meeting Notice

AGENCY: Department of Defense (DoD), Assistant Secretary of Defense (Health Affairs).

ACTION: Amended Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix 2) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150 the Department of Defense announces a change to the previously announced meeting of the Uniform Formulary Beneficiary Advisory Panel. The meeting notice published in the August 16, 2011 edition of the **Federal Register** (76 FR 50720) is changed to reflect a change in the meeting agenda. The current agenda item, Multiple Sclerosis is replaced with Phosphodiesterase-5 Inhibitors (PDE–5s). The Panel will review and comment on the Phosphodiesterase-5 Inhibitors, Non-Steroidal Anti-Inflammatory Drugs, Contraceptives, Designated Newly Approved Drugs in already reviewed classes and Pertinent Utilization Management Issues. All other aspects of the previously announced meeting agenda remain valid.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Blanche, Alternate Designated Federal Officer, Uniform Formulary Beneficiary Advisory Panel, 2450 Stanley Road, Suite 208, Ft. Sam Houston, TX 78234–6102, *Telephone:* (210) 295–1271; *Fax:* (210) 295–2789, *E-mail Address: Baprequests@tma.osd.mil.*

Dated: August 31, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–22701 Filed 9–2–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2011–0022]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on October 6, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number 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: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, or by phone at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 29, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 29, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0621–1a

SYSTEM NAME:

Student Loan Repayment Program Records.

SYSTEM LOCATION:

U.S. Army Human Resources Command, Education Incentives Branch, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5408.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current active duty, Army Reserves and National Guard or former members who participated in the Student Loan Repayment Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal: Individuals name, address, date of birth, rank and Social Security Number (SSN); Military Occupational Specialty (MOS).

Student Loan: Qualifying student loan name, amount of loan, date of loan transaction, student education loan number assigned by the lenders, lender's name, address and tax identification number.

Servicing Office: Servicing office's name, address, tax identification number and student loan approval or disapproval; verification of loan eligibility; recommendation for participation; and employee service agreement/contract.

Education: Educational and military training achievements, course attendance and completion records; tuition assistance documents; counseling records; academic and diagnostic tests which measure educational level and/or needs including recommendations of American Council on Education (ACE). A composite of course descriptors and scores recorded in a transcript registry for each soldier who volunteers for educational courses and/or programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 4302, Enlisted Members of Army: Schools; 10 U.S.C. 1606, Educational Assistance for Members of the Selected Reserve; Army Regulation 621–5, Army Continuing Education System; Army Regulations 621–202, Education, Army Educational Incentives and Entitlements and Student Loan Repayments; Army Regulation 601–210, Regular Army and Army Reserve Enlistment Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To determine qualifications of active Army, Army Reserves, and Army National Guard personnel or former members, who participated in the Student Loan Repayment Program for education incentives. These records will also identify which members are to repay incentives if they did not complete requirements at educational institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

To the Department of Labor, Bureau of Apprenticeship and Training for individuals enrolled in an Army Apprenticeship Program.

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Department of Veterans Affairs to provide payroll information for members who participated in making contributions to the Veterans Education Assistance Program (VEAP), and the Montgomery GI Bill Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By individual's name, Social Security Number (SSN), and fiscal year.

SAFEGUARDS:

Access to records is restricted to those users who have an official need-to-know, and who are properly trained and screened. In addition, the system will be a controlled system with passwords, and Common Access Card (CAC) governing access to data. All users are required to take Information Assurance and Privacy training. Electronic records are maintained within secured buildings in areas accessible only to persons having an official need to know, and who are properly trained and screened. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Disposition pending. Treat records as permanent until the National Archives and Records Administration approves the Army's retention and disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff, G–1, 300 Army Pentagon, Washington, DC 20310–0300 and Commander, U.S. Army Human Resources Command, Education Incentives Branch, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5408.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, Education Incentives Branch, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5408.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, Education Incentives Branch, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5408.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Defense Enrollment Eligibility Reporting System (DEERS) database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–22612 Filed 9–2–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: Office for Civil Rights, U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Equity and Excellence Commission (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: September 23, 2011. Time: 9 a.m. to 5:30 p.m.

ADDRESSES: The Commission will meet in Washington, DC at United States Department of Education at 400 Maryland Avenue, SW., Washington, DC 20202, in the Barnard Auditorium.

FOR FURTHER INFORMATION CONTACT: Jim Eichner, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. *E-mail: equitycommission@ed.gov. Telephone:* (202) 453–5945.

SUPPLEMENTARY INFORMATION: On September 23rd, 2011 from 9 a.m. to 5:30 p.m., the Equity and Excellence Commission will hold an open meeting in Washington, DC in Barnard Auditorium at the U.S. Department of Education's main building at 400 Maryland Avenue, SW., Washington, DC 20202.

The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's September 23 meeting will include finalizing the outline of the report, discussion of particular language for certain portions of the report and reaching consensus on particular recommendations. Due to time constraints, there will not be a public comment period, but, individuals wishing to provide comments may contact the Equity Commission via e-mail at *equitycommission@ed.gov.*

Individuals interested in attending the meeting must register in advance because seating may be limited. Please contact Kimberly Watkins-Foote at (202) 260–8197 or by e-mail at *equitycommission@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Watkins-Foote at (202) 260–8197 no later than September 16, 2011. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 from the hours of 9 a.m. to 5 p.m. E.S.T.

Sandra Battle,

Deputy Assistant Secretary for Enforcement, Office for Civil Rights.

[FR Doc. 2011–22680 Filed 9–2–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Energy Information Administration's Natural Gas Data Collection Program Package collections to the Office of Management and Budget (OMB) for revision and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by October 6, 2011. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by Fax at 202–395–7285 or e-mail to *Chad_S_Whiteman@omb.eop.gov* is recommended. The mailing address is 725 17th Street, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4718. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amy Sweeney. To ensure receipt of the comments by the due date, submission by FAX (202–586–4420) or e-mail (*amy.sweeney@eia.doe.gov*) is also recommended. The mailing address is Ms. Amy Sweeney, Energy Information Administration, Department of Energy, 1000 Independence Avenue, SW., EI–24, Washington, DC 20585–0670. Ms. Sweeney may be contacted by telephone at (202) 586–2627.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collections submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e,*

new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; (8) estimated number of respondents annually; (9) an estimate of the total annual reporting burden in hours (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response); and (10) an estimate of the total annual reporting and recordkeeping cost burden (in thousands of dollars).

1. EIA–176, EIA–191, EIA–757, EIA–857, EIA–895, EIA–910, and EIA–912.
2. U.S. Energy Information Administration.
3. OMB Number 1905–0175.
4. Revision and three-year extension.
5. All forms are mandatory except EIA–895, which is voluntary.
6. The purpose of the Natural Gas Data Collection Program Package is to collect basic and detailed data to meet the EIA's mandates and energy data users' needs. Adequate evaluation of the natural gas industry requires collection and processing of data related to natural gas production, processing, transmission, distribution, storage, marketing, and consumption. The data that the EIA collects are used to address significant energy industry issues. In line with its mandated responsibility to collect data that adequately describe the natural gas marketplace, the EIA evaluates the lifecycle of natural gas from its reserves and production to consumption and prices throughout the upstream and downstream markets. The data collected by the Natural Gas Data Collection Program Package surveys are among those that are required to address the status and future of the role of natural gas in the energy mix and overall economy. Among the data series resulting from the information collected in these surveys is the rate, location, and source of natural gas produced and entering the market, the quantities being stored and the location of the storage, and the quantities being delivered to various consuming sectors. Prices are also reported on at various points in the production and distribution stream.
7. Business or other for-profit.
8. 3218 Respondents.
9. Annual total of 50,131 hours, and respondent frequency is as follows: Forms EIA–176 and EIA–757 Schedule B are collected annually; forms EIA–191, EIA–857, and EIA–910 are collected monthly; EIA–757 Schedule A is collected once every three years; and Form EIA–912 is collected weekly.
10. Annual total of $0.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, P.L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, August 30, 2011.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, Energy Information Administration.

[FR Doc. 2011–22682 Filed 9–2–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9459–7]

Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-Stressor Vulnerability Assessments—Release of Final Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: EPA is releasing a final report entitled, *Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-stressor Vulnerability Assessments,* (EPA/600/R–11/011F). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

This report investigates the issues and challenges associated with identifying, calculating, and mapping indicators of the relative vulnerability of water quality and aquatic ecosystems across the United States to the potential impacts of global change. Using a large set of environmental indicators drawn from scientific literature and data, this final report explores the conceptual and practical challenges associated with using such indicators to assess the resilience of ecosystems and human systems to a variety of existing stresses and mal-adaptations.

DATES: The report was posted publicly on August 26, 2011.

ADDRESSES: The report, *Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-stressor Vulnerability Assessments,* is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

FOR FURTHER INFORMATION CONTACT: For additional information, contact the National Center for Environmental Assessment; Chris Weaver; telephone: 703–347–8621; facsimile: 703–347–8694; or e-mail: *weaver.chris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Information About the Project/Document

This report investigates the issues and challenges associated with identifying, calculating, and mapping indicators of relative vulnerability of water quality and aquatic ecosystems across the United States to the potential adverse impacts of external forces, such as long-term climate and land-use change.

The report does not directly evaluate the potential impacts of global change on ecosystems and watersheds. Rather, it explores the assumption that the impacts of existing stressors will be a key input to any comprehensive global change vulnerability assessment, and the impacts of global change will be expressed via interactions with these stressors. To date, there has been relatively little exploration of the assumption that the practical challenges associated with assessing the resilience of ecosystems and human systems might vary as a result of existing global change stresses and mal-adaptations. The work described in this report is a preliminary attempt at such an exploration.

This report uses more than 600 indicators of water quality and aquatic ecosystem conditions drawn from numerous scientific literature and datasets from within EPA, additional Federal agencies, and other organizations. The report serves as a starting point for identifying challenges in calculating and mapping national vulnerabilities. The challenges identified include gaps in ideas, methods, data, and tools. Some of those specific challenges are:

- Identifying those indicators that speak specifically to ''vulnerability'' as opposed to those reflecting simply a state or condition;

• Calculating and estimating the values of these vulnerability indicators, including establishing important indicator thresholds that reflect abrupt or large changes in the vulnerability of water quality or aquatic ecosystems;

• Mapping these vulnerability indicators nationally, including data availability and spatial aggregation of the data; and

• Combining and compositing indicators and developing multi-indicator indices of vulnerability.

This report is intended to be a building block for future work on multi-stressor global change vulnerability assessments. Hopefully, it will contribute to improve links between the decision support needs of the water quality and aquatic ecosystem management communities and the priorities and capabilities of the global change science data and modeling communities.

Dated: August 15, 2011.

Joseph DeSantis,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–22669 Filed 9–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9459–6]

Two Proposed CERCLA Administrative Settlement Agreements for Long-Term Access at the Bountiful/Woods Cross 5th South PCE Plume NPL Site, Davis County, UT

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1), notice is hereby given of two proposed Administrative Settlement Agreements for long-term access at the Bountiful/Woods Cross 5th South PCE Plume Site. The PCE plume extends in area through the Cities of Bountiful, West Bountiful and Woods Cross in Davis County, Utah. The proposed Settlement Agreements are with Davis County and Security Investment Ltd. (hereinafter jointly referred to as ''settling parties''). The Settlement Agreements require the settling parties to provide the U.S. Environmental Protection Agency (EPA) and the Utah Department of Environmental Quality with long-term access (estimated to be approximately 60 years) for the construction, operation and maintenance of the PCE plume pump and treat infrastructure. In exchange, the settling parties' potential CERCLA civil liability at their respective properties will be resolved. The Settlement Agreements include an EPA covenant not to sue the settling parties pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to either or both of the Settlement Agreements. The United States will consider all comments received and may modify or withdraw its consent to the Settlement Agreements if comments received disclose facts or considerations which indicate that the Settlement Agreements are inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Davis County Library, South Branch, 725 South Main Street, in Bountiful, UT 84010–6326. (801) 294–4054.

DATES: Comments must be submitted on or before October 6, 2011.

ADDRESSES: The proposed Settlement Agreements are also available for public inspection at the EPA Region 8 Records Center located on the second floor at 1595 Wynkoop Street, in Denver, Colorado, during normal business hours. A copy of the proposed settlement(s) may be obtained from Carol Pokorny, Enforcement Specialist, U.S. EPA, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Ms. Pokorny can be reached at (303) 312–6970. Comments should reference the Bountiful/Woods Cross 5th South PCE Plume NPL Site, the EPA Docket No. CERCLA–08–2011–015 and EPA Docket No. CERCLA–08–2011–016, and should be addressed to Ms. Pokorny at the address given above.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, USEPA, Technical Enforcement Program, 1595 Wynkoop Street, Denver, Colorado 80202–1129. *Telephone:* (303) 312–6970.

Dated: August 26, 2011.

Andrew M. Gaydosh,

Assistant Regional Administrator, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 2011–22672 Filed 9–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 7, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0888.

Title: Section 1.221, Notice of hearing; appearances; Section 1.229 Motions to

enlarge, change, or delete issues; Section 1.248 Prehearing conferences; hearing conferences; Section 76.7, Petition Procedures; Section 76.9, Confidentiality of Proprietary Information; Section 76.61, Dispute Concerning Carriage; Section 76.914, Revocation of Certification; Section 76.1001, Unfair Practices; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 668 respondents; 668 responses.

Estimated Time per Response: 6 to 88 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 303(r), and 616 of the Communications Act of 1934, as amended.

Total Annual Burden: 31,396 hours.

Total Annual Cost: $2,505,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the Commission must file a petition pursuant to the pleading requirements in Section 76.7 and use the method described in Sections 0.459 and 76.9 to demonstrate that confidentiality is warranted.

Needs and Uses: On August 1, 2011, the Commission adopted a Second Report and Order, Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, MB Docket No. 07–42, FCC 11–119. In the Second Report and Order, the Commission took initial steps to improve the procedures for addressing program carriage complaints by: (i) Codifying in the Commission's rules what a program carriage complainant must demonstrate in its complaint to establish a *prima facie* case of a program carriage violation; (ii) providing the defendant with 60 days (rather than the current 30 days) to file an answer to a program carriage complaint; (iii) establishing deadlines for action by the Media Bureau and Administrative Law Judges (''ALJ'') when acting on program carriage complaints; and (iv) establishing procedures for the Media Bureau's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract.

The following rule sections contain new or revised information collection requirements that the Commission is seeking approval for from the Office of Management and Budget (OMB):

47 CFR 1.221(h) requires that, in a program carriage complaint proceeding filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, each party, in person or by attorney, shall file a written appearance within five calendar days after the party informs the Chief Administrative Law Judge that it elects not to pursue alternative dispute resolution pursuant to Section 76.7(g)(2) or, if the parties have mutually elected to pursue alternative dispute resolution pursuant to Section 76.7(g)(2), within five calendar days after the parties inform the Chief Administrative Law Judge that they have failed to resolve their dispute through alternative dispute resolution. The written appearance shall state that the party will appear on the date fixed for hearing and present evidence on the issues specified in the hearing designation order.

47 CFR 1.229(b)(3) requires that, in a program carriage complaint proceeding filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, a motion to enlarge, change, or delete issues shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the **Federal Register**.

47 CFR 1.229(b)(4) provides that any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), (b)(2), and (b)(3) of 47 CFR Section 1.229, shall set forth the reason why it was not possible to file the motion within the prescribed period.

47 CFR 1.248(a) provides that the initial prehearing conference as directed by the Commission shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h) or within such shorter or longer period as the Commission may allow on motion or notice consistent with the public interest.

47 CFR 1.248(b) provides that the initial prehearing conference as directed by the presiding officer shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h) or within such shorter or longer period as the presiding officer may allow on motion or notice consistent with the public interest.

47 CFR 76.7(g)(2) provides that, in a proceeding initiated pursuant to Section 76.7 that is referred to an administrative law judge, the parties may elect to resolve the dispute through alternative dispute resolution procedures, or may proceed with an adjudicatory hearing, provided that the election shall be submitted in writing to the Commission and the Chief Administrative Law Judge.

47 CFR 76.1302(c)(1) provides that a program carriage complaint filed pursuant to Section 76.1302 must contain the following: whether the complainant is a multichannel video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant.

47 CFR 76.1302(d) sets forth the evidence that a program carriage complaint filed pursuant to Section 76.1302 must contain in order to establish a *prima facie* case of a violation of Section 76.1301.

47 CFR 76.1302(e)(1) provides that a multichannel video programming

distributor upon whom a program carriage complaint filed pursuant to Section 76.1302 is served shall answer within sixty (60) days of service of the complaint, unless otherwise directed by the Commission.

47 CFR 76.1302(k) permits a program carriage complainant seeking renewal of an existing programming contract to file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission. To allow for sufficient time to consider the petition for temporary standstill prior to the expiration of the existing programming contract, the petition for temporary standstill and complaint shall be filed no later than thirty (30) days prior to the expiration of the existing programming contract.

The following rule sections are also covered in this information collection but do not require additional OMB review and approval:

47 CFR 76.7. Pleadings seeking to initiate FCC action must adhere to the requirements of Section 76.6 (general pleading requirements) and Section 76.7 (initiating pleading requirements). Section 76.7 is used for numerous types of petitions and special relief petitions, including general petitions seeking special relief, waivers, enforcement, show cause, forfeiture and declaratory ruling procedures.

47 CFR 76.9. A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the FCC must file a petition pursuant to the pleading requirements in Section 76.7 and use the method described in Sections 0.459 and 76.9 to demonstrate that confidentiality is warranted. The petitions filed pursuant to this provision are contained in the existing information collection requirement and are not changed by the rule changes.

47 CFR 76.61(a) permits a local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7. Section 76.61(b) permits a qualified local noncommercial educational television station that believes a cable operator has failed to comply with the FCC's signal carriage or channel positioning requirements (Sections 76.56 through 76.57) to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR 76.61(a)(1) states that whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections 76.56 and 76.57, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

47 CFR 76.61(a)(2) states that the cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.

47 CFR 76.914(c) permits a cable operator seeking revocation of a franchising authority's certification to file a petition with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR 76.1001(b)(2) permits any multichannel video programming distributor to commence an adjudicatory proceeding by filing a complaint with the Commission alleging that a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor, has engaged in an unfair act involving terrestrially delivered, cable-affiliated programming, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Sections 76.1001(b)(2) and 76.1003. In program access cases involving terrestrially delivered, cable-affiliated programming, the defendant has 45 days from the date of service of the complaint to file an answer, unless otherwise directed by the Commission. A complainant shall have the burden of proof that the defendant's alleged conduct has the purpose or effect of hindering significantly or preventing the complainant from providing satellite cable programming or satellite broadcast programming to subscribers or consumers; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant alleging that a terrestrial cable programming vendor has engaged in discrimination shall have the burden of proof that the terrestrial cable programming vendor is wholly owned by, controlled by, or under common control with a cable operator or cable operators, satellite cable programming vendor or vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendor or vendors; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant that wants a currently pending complaint involving terrestrially delivered, cable-affiliated programming considered under the rules must submit a supplemental filing alleging that the defendant has engaged in an unfair act after the effective date of the rules. In such case, the complaint and supplement will be considered pursuant to the rules and the defendant will have an opportunity to answer the supplemental filing, as set forth in the rules.

47 CFR 76.1003(a) permits any multichannel video programming distributor (MVPD) aggrieved by conduct that it believes constitutes a violation of he FCC's competitive access to cable programming rules to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a compliant, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1003.

47 CFR 76.1003(b) requires any aggrieved MVPD intending to file a complaint under this section to first notify the potential defendant cable operator, and/or the potential defendant satellite cable programming vendor or satellite broadcast programming vendor, that it intends to file a complaint with the Commission based on actions

alleged to violate one or more of the provisions contained in Sections 76.1001 or 76.1002 of this part. The notice must be sufficiently detailed so that its recipient(s) can determines the nature of the potential complainant. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing complaint with the Commission.

47 CFR 76.1003(c) describes the required contents of a program access complaint, in addition to the requirements of Section 76.7 of this part.

47 CFR 76.1003(c)(3) requires a program access complaint to contain evidence that the complainant competes with the defendant cable operator, or with a multichannel video programming distributor that is a customer of the defendant satellite cable programming or satellite broadcast programming vendor or a terrestrial cable programming vendor alleged to have engaged in conduct described in Section 76.1001(b)(1).

47 CFR 76.1003(d) states that, in a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim.

47 CFR 76.1003(e)(1) requires a cable operator, satellite cable programming vendor, or satellite broadcast programming vendor that expressly references and relies upon a document in asserting a defense to a program access complaint filed pursuant to Section 76.1003 or in responding to a material allegation in a program access complaint filed pursuant to Section 76.1003, to include such document or documents as part of the answer. Except as otherwise provided or directed by the Commission, any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint.

47 CFR 76.1003(e)(2) requires an answer to an exclusivity complaint to provide the defendant's reasons for refusing to sell the subject programming to the complainant. In addition, the defendant may submit its programming contracts covering the area specified in the complaint with its answer to refute allegations concerning the existence of an impermissible exclusive contract. If there are no contracts governing the specified area, the defendant shall so certify in its answer. Any contracts submitted pursuant to this provision may be protected as proprietary pursuant to Section 76.9 of this part.

47 CFR 76.1003(e)(3) requires an answer to a discrimination complaint to state the reasons for any differential in prices, terms or conditions between the complainant and its competitor, and to specify the particular justification set forth in Section 76.1002(b) of this part relied upon in support of the differential.

47 CFR 76.1003(e)(4) requires an answer to a complaint alleging an unreasonable refusal to sell programming to state the defendant's reasons for refusing to sell to the complainant, or for refusing to sell to the complainant on the same terms and conditions as complainant's competitor, and to specify why the defendant's actions are not discriminatory.

47 CFR 76.1003(f) provides that, within fifteen (15) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

47 CFR 76.1003(g) states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three specified events occurs.

47 CFR 76.1003(h) sets forth the remedies that are available for violations of the program access rules, which include the imposition of damages, and/or the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor, as well as sanctions available under title V or any other provision of the Communications Act.

47 CFR 76.1003(j) states in addition to the general pleading and discovery rules contained in Section 76.7 of this part, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

47 CFR 76.1003(l) permits a program access complainant seeking renewal of an existing programming contract to file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission.

47 CFR Section 76.1302(a) permits any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the FCC's regulation of carriage agreements to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1302.

47 CFR 76.1302(b) states that any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Section 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1302(c) specifies the content of carriage agreement complaints.

47 CFR 76.1302(e) states that an answer to a program carriage complaint shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised. (This subsection has been redesignated from subsection (d) to subsection (e).)

47 CFR 76.1302(f) states that within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters. (This subsection has been redesignated from subsection (e) to subsection (f).)

47 CFR 76.1302(h) states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs. (This subsection has been redesignated from subsection (f) to subsection (h).)

47 CFR 76.1302(j)(1) states that upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. (This subsection has been redesignated from subsection (g) to subsection (j).)

47 CFR 76.1513(a) permits any party aggrieved by conduct that it believes constitute a violation of the FCC's regulations or in section 653 of the Communications Act (47 U.S.C. 573) to commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1513.

47 CFR 76.1513(b) provides that an open video system operator may not provide in its carriage contracts with programming providers that any dispute must be submitted to arbitration, mediation, or any other alternative method for dispute resolution prior to submission of a complaint to the Commission.

47 CFR 76.1513(c) requires that any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1513(d) describes the contents of an open video system complaint.

47 CFR 76.1513(e) addresses answers to open video system complaints.

47 CFR 76.1513(f) states within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

47 CFR 76.1513(g) requires that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs.

47 CFR 76.1513(h) states that upon completion of the adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2011–22616 Filed 9–2–11; 8:45 am]

BILLING CODE 6712–01–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 September 20, 2011.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Patriot Financial Partners, GP, L.P.; Patriot Financial Partners, L.P.; Patriot Financial Partners Parallel, L.P.; Patriot Financial Partners, GP, LLC; Patriot Financial Managers, L.P.; Patriot Financial Managers LLC; and Ira M. Lubert; W. Kirk Wycoff, and James J. Lynch,* all of Philadelphia, Pennsylvania; to acquire voting shares of Heritage Oakes Bancorp, and thereby indirectly acquire voting shares of Heritage Bank, both in Paso Robles, California.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Gregory J. Weed,* Cheyenne Wells, Colorado; to acquire voting shares of Weed Investment Group, Inc., and thereby indirectly acquire voting shares of The Eastern Colorado Bank, both in Cheyenne Wells, Colorado.

Board of Governors of the Federal Reserve System, August 31, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–22641 Filed 9–2–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: The Hospital Preparedness Program—Generic HPP and Future Collection Activities—New—OMB No. 0990–OS—Assistant Secretary for Preparedness and Response (ASPR).

Abstract: The Program Evaluation Section (PES), part of the Department of Health and Human Services (HHS), Assistant Secretary for Preparedness and Response (ASPR), Office of Preparedness and Emergency Operations (OPEO), Division of Preparedness Planning (DPP), in conjunction with the Hospital Preparedness Program (HPP) in the Division of National Healthcare Preparedness Programs, is seeking clearance by the Office of Management of Budget (OMB) for a Generic Data Collection Form to serve as the cornerstone of its effort to assess awardee performance under the HPP Cooperative Agreement (CA) Program. Performance data are gathered from awardees as part of their Mid-Year and End-of-Year Progress Reports and other similar information collections (ICs) which have the same general purpose (Healthcare Coalitions, Capabilities and Budget Information), account for awardee spending and performance on all activities conducted in pursuit of achieving the HPP Grant goals.

Additionally, to reduce administrative burden on awardees, there is a need to develop reporting forms and templates that allow awardees and ASPR to more easily capture the data and other information already provided in the grant application at other times during the yearly grant cycle, and onsite visits by project and field officers (e.g. pre-populating some elements of the mid-year and end-of-year reporting). Such reporting will systematically capture relevant information in a format that allows for easy access and use within a number of related grant business processes, including Grants management, Program and project management, and performance metrics and evaluation. A standardized program-specific application addendum will facilitate such data retrieval and decrease overall government administration costs.

This data collection effort is crucial to HPP's decision-making process regarding the continued existence, design and funding levels of this program. Results from these data analyses enable HPP to monitor healthcare emergency preparedness and progress towards national preparedness goals.

Estimated Annualized Burden Table

ESTIMATED ANNUAL BURDEN HOURS FOR THE GENERIC HPP AND FUTURE COLLECTION ACTIVITIES

Data collection activity	Number of respondents	Number of responses	Response time (hours)	Total annual burden hours (for all awardees)
Generic and Future Program Data Information Collection(s)	62	1	58	3,596
Total				3,596

John Teeter,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–21643 Filed 9–2–11; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: National Survey of Single Parent Caregivers—OMB No. 0990–NEW–OWH; HHS, Office on Women's Health.

Abstract: The National Survey of Single Parent Caregivers will measure the size, characteristics, and unmet needs of single parents providing care for an adult family member or friend. Single parent caregivers provide support services and financial assistance for two generations without the aid of a married partner. Survey results will be used to develop national estimates of the costs borne by single parent caregivers, their psychosocial burden, stress, and diminished social and leisure opportunities, and suggest policy options that mitigate the burden on single parent caregivers. The survey will be administered once under a one-year request, and will contact individuals using computer-assisted telephone interviewing (CATI) methods.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Single Parent Caregiver Survey Instrument.	Single Parent Caregivers	1,000	1	20/60	333

John Teeter,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–21644 Filed 9–2–11; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health; Cancellation

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; Cancellation.

SUMMARY: A notice was published in the **Federal Register** on Tuesday, July 5, 2011, Vol. 76, No. 128, to announce that a meeting of the Advisory Committee on Minority Health (ACMH) was scheduled to be held on Monday, August 29, 2011 from 9 a.m. to 5 p.m., and Tuesday, August 30, 2011, from 9 a.m. to 1 p.m. This meeting has been cancelled in its entirety. The meeting was cancelled because of the weather projections that the Washington, DC metropolitan area would be affected by a significant hurricane. The meeting was cancelled to ensure the safety of the Committee members, Federal staff, and all other interested parties. Information about this meeting being rescheduled will be posted on the Committee's Web site, which can be accessed at *http://minorityhealth.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Executive Director, ACMH; Suite 600 Tower Building, 1101 Wootton Parkway, Rockville, MD 20852. Telephone: (240) 453–2882; Fax: (240) 453–2883.

Dated: August 30, 2011.

Monica Baltimore,

Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Office of the Assistant Secretary for Health.

[FR Doc. 2011–22659 Filed 9–2–11; 8:45 am]

BILLING CODE 4154–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0447]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 6, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *FAX:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0563. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.Vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice—(OMB Control Number 0910–0563)—Extension

The guidance is intended to provide information to manufacturers of veterinary and human drugs, including human biological drug products, on how to resolve disputes of scientific and technical issues relating to current good manufacturing practice (CGMP). Disputes related to scientific and technical issues may arise during FDA inspections of pharmaceutical manufacturers to determine compliance with CGMP requirements, or during FDA's assessment of corrective actions undertaken as a result of such inspections. The guidance provides procedures that encourage open and prompt discussion of disputes and lead to their resolution. The guidance describes procedures for raising such disputes to the Office of Regulatory Affairs (ORA) and center levels and for requesting review by the dispute resolution (DR) Panel.

When a scientific or technical issue arises during an FDA inspection, the manufacturer should initially attempt to reach agreement on the issue informally with the investigator. Certain scientific or technical issues may be too complex or time consuming to resolve during the inspection. If resolution of a scientific or technical issue is not accomplished through informal mechanisms prior to the issuance of the FDA Form 483, the manufacturer can formally request DR and can use the formal two-tiered DR process described in the guidance.

Tier-one of the formal DR process involves scientific or technical issues raised by a manufacturer to the ORA and center levels. If a manufacturer disagrees with the tier-one decision, tier-two of the formal DR process would then be available for appealing that decision to the DR panel.

The written request for formal DR to the appropriate ORA unit should be made within 30 days of the completion of an inspection, and should include all supporting documentation and arguments for review, as described in this document. The written request for formal DR to the DR Panel should be

made within 60 days of receipt of the tier-one decision and should include all supporting documentation and arguments, as described in the following paragraphs.

All requests for formal DR should be in writing and include adequate information to explain the nature of the dispute and to allow FDA to act quickly and efficiently. Each request should be sent to the appropriate address listed in the guidance and include the following:

- Cover sheet that clearly identifies the submission as either a request for tier-one DR or a request for tier-two DR;
- Name and address of manufacturer inspected (as listed on FDA Form 483);
- Date of inspection (as listed on FDA Form 483);
- Date the FDA Form 483 issued (from FDA Form 483);
- Facility Establishment Identifier (FEI) Number, if available (from FDA Form 483);
- FDA employee names and titles that conducted inspection (from FDA Form 483);
- Office responsible for the inspection (e.g., district office, as listed on the FDA Form 483);
- Application number if the inspection was a preapproval inspection;
- Comprehensive statement of each issue to be resolved:
- Identify the observation in dispute:
  - Clearly present the manufacturer's scientific position or rationale concerning the issue under dispute with any supporting data.
  - State the steps that have been taken to resolve the dispute, including any informal DR that may have occurred before the issuance of the FDA Form 483.
  - Identify possible solutions.
  - State expected outcome.
- Name, title, telephone and FAX number, and email address (as available) of manufacturer contact.

The guidance was part of the FDA initiative ''Pharmaceutical CGMPs for the 21st Century: A Risk-Based Approach,'' which was announced in August 2002. The initiative focuses on FDA's current CGMP program and covers the manufacture of veterinary and human drugs, including human biological drug products. The Agency formed the Dispute Resolution Working Group comprising representatives from ORA, the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Veterinary Medicine. The working group met weekly on issues related to the DR process and met with stakeholders in December 2002 to seek their input.

The guidance was initiated in response to industry's request for a formal DR process to resolve differences related to scientific and technical issues that arise between investigators and pharmaceutical manufacturers during FDA inspections of foreign and domestic manufacturers. In addition to encouraging manufacturers to use currently available DR processes, the guidance describes the formal two-tiered DR process explained previously. The guidance also covers the following topics:

- The suitability of certain issues for the formal DR process, including examples of some issues with a discussion of their appropriateness for the DR process.
- Instructions on how to submit requests for formal DR and a list of the supporting information that should accompany these requests.
- Public availability of decisions reached during the DR process to promote consistent application and interpretation of drug quality-related regulations.

In the **Federal Register** of June 20, 2011 (76 FR 35896), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment. The comment was not related to the information collection.

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

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests for Tier-One Dispute Resolution	2	1	2	30	60
Requests for Tier-Two Dispute Resolution	1	1	1	8	8
Total					68

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

Description of Respondents: Pharmaceutical manufacturers of veterinary and human drug products and human biological drug products.

Burden Estimate: Based on the number of requests for tier-one and tier-two dispute resolution received by FDA since the guidance published in January 2006, FDA estimates that approximately two manufacturers will submit approximately two requests annually for a tier-one DR and that there will be one appeal of these requests to the DR Panel (request for tier-two DR). FDA estimates that it will take manufacturers approximately 30 hours to prepare and submit each request for a tier-one DR and approximately 8 hours to prepare and submit each request for a tier-two DR. Table 1 of this document provides an estimate of the annual reporting burden for requests for tier-one and tier-two DRs.

Dated: August 31, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–22683 Filed 9–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0530]

Mobile Medical Applications Draft Guidance; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Friday, August 12, 2011 (76 FR 50231). The document announced a public workshop entitled ''Mobile

Medical Applications Draft Guidance.'' The document was published with an outdated address in the section entitled ''Will there be transcripts of the meeting?'' This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3208, Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–20574, appearing on page 50231 in the **Federal Register** of Friday, August 12, 2011, the following correction is made:

1. On page 50233, in the second column, under the section entitled ''Will there be transcripts of the meeting?'' the address for the Division of Freedom of Information is corrected to read ''Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.''

Dated: August 31, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–22674 Filed 9–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Fully Automated Bone Mineral Densitometry on Routine CT Scans

Description of Technology: The invention relates to an improved system for measuring bone mineral density (BMD). BMD measurement is an important tool for the diagnosis of osteopenia- and osteoporosis-related fractures, a significant national health problem primarily affecting the elderly and women after menopause. More specifically, the invention relates to an algorithm and software for fully automating BMD measurement, using routine CT data and eliminating the need for a reference phantom or a specialized imaging protocol. The current standard methods not only require reference phantom to be placed underneath the patient and a specialized imaging protocol, but they also require manually placed regions of interest (ROI) to identify the appropriate bone structures. The benefit of the automated method provided in the invention is that with this system BMD measurement will be available for every patient with chest/abdominal CT scan (millions are done every year) so that the potential low bone mineral density can be discovered.

Potential Commercial Applications:

- The technique can be integrated to a CT scanner to provide automated measurement of BMD for every CT scan.
- The technique can be integrated into PACS (Picture Archiving and Communication Systems) to report BMD at the time of image interpretation by the radiologist or clinician.

Competitive Advantages: The technique can be readily integrated to existing medical imaging systems such as CT scanners (to provide BMD measurement with every CT scan) or PACS (to report BMD at the time of image interpretation).

Development Stage:

- Prototype
- In vivo data available (human)

Inventors: Ronald M. Summers *et al.* (NIH–CC)

Publication: Summers RM, et al. Feasibility of simultaneous computed tomographic colonography and fully automated bone mineral densitometry in a single examination. J Comput Assist Tomogr. 2011 Mar–Apr;35(2):212–216. [PMID 21412092]

Intellectual Property: HHS Reference No. E–218–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Filovirus Vaccines and Diagnostics Based on Glycoprotein-Fc Fusion Proteins

Description of Technology: Ebola virus is a member of the Filoviridae, a family of viruses classified as ''Category A'' bioterrorism agents that cause severe hemorrhagic fever in humans and nonhuman primates with high morbidity and mortality rates up to 90%. This invention provides an efficacious Filovirus subunit vaccine based on a recombinant protein consisting of the extracellular domain of the Filovirus glycoprotein fused to an Fc Fragment of human immunoglobulin (FiloGP-Fc). Vaccination with FiloGP-Fc elicited humoral and cellular immunity against Filoviruses. The FiloGP-Fc vaccine induced antibodies that bound and neutralized replication-competent recombinant G-deleted Vesicular Stomatitis Virus containing the Filovirus GP (rVSV-FiloGP), and protected animals against Filovirus lethal challenge. Also described are cellular and humoral immunity tests as well as rVSV-FiloGP neutralization tests to evaluate anti-Filovirus immune responses in individuals.

Potential Commercial Applications:

- Vaccines for protection against infections by Ebola Virus and other Filoviruses.
- Diagnostic tests for cellular and humoral immunity based on FiloGP-Fc and rVSV-FiloGP to evaluate anti-Filovirus immune responses in vaccinated and infected animals and individuals.

Competitive Advantages: Filovirus vaccine candidates based on virus-like particles and virus vectors are currently under development by others. However, efficacious subunit vaccines have not yet been developed. The FiloGP-Fc fusion protein described in this invention has the advantage of resembling the native glycoprotein expressed at the surface of cells and viral particles. Thus, in addition to vaccines, the soluble FiloGP-Fc fusion proteins are ideal substrates to evaluate immune responses in animals and vaccinees.

Development Stage:

- Early-stage
- Pre-clinical
- In vitro data available
- In vivo data available (animal)

Inventors: Geraldo Kaplan (FDA), Krishnamurthy Konduru (FDA), *et al.*

Publication: Konduru K, *et al.* Ebola virus glycoprotein Fc fusion protein confers protection against lethal challenge in vaccinated mice. Vaccine 2011 Apr 5;29(16):2968–2977. [PMID 21329775]

Intellectual Property: HHS Reference No. E–222–2010/0—U.S. Patent Application No. 61/407,842 filed 28 October 2010.

Licensing Contact: Cristina Thalhammer-Reyero, PhD, MBA; 301–435–4507; *thalhamc@mail.nih.gov.*

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–22688 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

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Vaccine To Prevent BK Polyomavirus-associated Kidney and Bladder Infections in Organ Transplant Recipients

Description of Technology: Nearly all adults have chronic urinary tract infections with one or more strains of BK polyomavirus (BKV). In healthy persons, the infection is controlled by the immune system and no symptoms are apparent. However, immunosuppressed persons, such as organ transplant recipients, can suffer from bladder disease or kidney disease caused by uncontrolled BKV growth. BKV causes cancer in animals; it is unknown if the same is true in humans. A significant need remains for a means of preventing BKV infection and associated pathologies.

Researchers at the National Cancer Institute, NIH, have developed compositions and therapeutic methods for pre-vaccination of organ transplant recipients against BKV and prognostic methods to identify patients that may benefit from the vaccination. Methods for producing a BKV vaccine against all four known BKV serotypes are in development.

Potential Commercial Applications:

- An effective multivalent BKV vaccine to prevent BKV-associated pathologies of the urinary tract and bladder.
- A prognostic kit to determine clinical benefit.
- Tests for identifying renal transplant donors and recipients.

Competitive Advantages:

- A successful proof-of-principle study in mice has been conducted.
- The inventors have identified the major virulent BKV serotype.
- No vaccine for BKV infection currently exists.
- If BKV is linked to cancer, the technology might be relevant to vaccines applicable to the general public.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

Inventors: Christopher Buck and Diana Pastrana (NCI).

Publication: In preparation.

Intellectual Property: HHS Reference No. E–168–2011/0—U.S. Patent Application No. 61/508,897 filed 18 July 2011.

Licensing Contact: Patrick McCue, PhD; 301–435–5560; *mccuepat@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Center for Cancer Research, Laboratory of Cellular Oncology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact John Hewes, PhD at *hewesj@mail.nih.gov.*

Gas Permeable Flasks To Grow Tumor Infiltrating Lymphocytes (TIL) for More Effective Anti-Cancer Immunotherapy

Description of Technology: Scientists at NIH have developed a strategy to obtain large quantities of highly reactive tumor infiltrating lymphocytes (TIL) from patient tumor samples for anti-cancer immunotherapy by making use of gas permeable (GP) flasks. This advancement in personalized anti-cancer immunotherapy involves culturing a tumor sample in a series of GP containers to isolate and rapidly expand TIL. The process provides suitable quantities of TIL for adoptive transfer into the cancer patient more reliably than previous approaches.

Culturing and growing TIL in the GP containers permits efficient gas exchange between TIL cells and the air to promote optimal respiration, growth, and viability of the patient's TIL throughout the process. Using GP flasks in the TIL expansion process provides for better circulation of the growth media and larger surface area so more TIL can grow per unit volume. Therefore, less reagents and fewer numbers of culture containers are need to generate the required number of TIL for adoptive immunotherapy protocols to treat cancer patients. NIH researchers have demonstrated the advantages of this GP TIL growth process in comparison to their more established TIL expansion protocols using human patient tumor samples. This new TIL production method should enable TIL therapy to become more GMP compliant and allow it to become more standardized for widespread utilization as a cancer treatment option outside of NIH.

Potential Commercial Applications:

- Adoptive cell transfer therapy (immunotherapy) for a variety of human cancers.
- Growing TIL in gas permeable cultureware has the potential to become the new standard for obtaining suitable quantities of TIL for use in adoptive immunotherapy.
- GMP grade TIL manufacture process to allow for regulatory approval of TIL therapy so that it can become a more widely available personalized cancer treatment option.

Competitive Advantages:

- Simpler, faster, less laborious, less reagent intensive, and less equipment intensive TIL growth process compared to methods of obtaining TIL without gas permeable cultureware.
- Reduces risks of microbial contamination versus comparable methodologies.
- More GMP-compliant than other TIL growing processes.
- Capable of producing larger quantities of TIL more reliably than other TIL methodologies.
- Potential to expand the number of patients and types of cancers treatable by TIL.

Development Stage:

- Pre-clinical.
- In vitro data available.
- In vivo data available (human).

Inventors: Steven A. Rosenberg (NCI), Mark E. Dudley (NCI), Robert P. Somerville (NCI), Jianjian Jin (CC), Marianna V. Sabatino (CC), David F. Stroncek (CC).

Intellectual Property: HHS Reference No. E–114–2011/0—U.S. Patent Application No. 61/466,200 filed 22 March 2011.

Related Technologies:

- HHS Reference No. E–275–2002/1—U.S. Patent Application No. 10/526,697 filed 5 May 2005 (and foreign counterparts).
- HHS Reference No. E–273–2009/0—U.S. Patent Application No. 12/869,390 filed 26 August 2010.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Surgery Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize gas permeable flasks for cell and gene therapy applications and multicenter clinical trials. For collaboration opportunities, please contact John Hewes, PhD, at *hewesj@mail.nih.gov.*

A Novel Optomechanical Module that Enables a Conventional *i*nverted Microscope To Provide *S*elective *P*lane *I*llumination *M*icroscopy (iSPIM)

Description of Technology: The invention describes an optomechanical module that, when engaged with a conventional inverted microscope, provides selective plane illumination microscopy (iSPIM). The module is coupled to the translational base of the microscope whereby a SPIM excitation objective is engaged to one portion of the mount body, and a SPIM detection objective (having a longitudinal axis perpendicular to that of the excitation objective) is engaged to another portion of the mount body. Such a system offers the advantages of SPIM (optically sectioned, high-speed volumetric interrogation of living samples, enabling, for example, the study of developmental or neuronal dynamics at high frame rates), while maintaining the flexibility and sample geometry of commercially available inverted microscopes (thus additionally allowing wide-field, TIRF, confocal, or 2 photon imaging of samples).

Potential Commercial Applications: The microscope can be used for:

- Imaging of live whole animals (*e.g.* worms) (demonstrated already).
- Superresolution (photoactivated localization microscopy) with minimal bleaching of dye molecules.
- High speed investigation of neuronal dynamics at high frame rates.

Competitive Advantages:

- The system offers the advantages of SPIM, while maintaining the flexibility and sample geometry of commercially available inverted microscopes.
- In this system the sample can be easily mounted on a rectangular coverslip and may be translated using an automated 3D mechanical stage and additionally imaged using the conventional light path built into the inverted microscope frame.

Development Stage:

- Prototype.
- In vivo data available (animal).

Inventors: Hari Shroff (NIBIB) *et al.*

Publication: A publication is under review at PNAS.

Intellectual Property: HHS Reference No. E–078–2011/0—U.S. Provisional Patent Application No. 61/449,422 filed 04 Mar 2011.

Licensing Contact: Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The NIBIB is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize applications of the invention. For collaboration opportunities, please contact Hari Shroff at 301–435–1995 or *hari.shroff@nih.gov.*

A Vaccine for *Shigella sonnei* for Both Children and Adults

Description of Technology: There is currently no vaccine widely available for shigellosis, which affects over 150 million people worldwide and causes over 1 million deaths a year, mostly children. The present invention discloses a novel immunogen to be used in a vaccine for both children and adults. The immunogen, a low-molecular mass O–SP-core fragment, generates high antibody responses in animal studies, which means reduced number of vaccinations. The immunogen is easy to isolate for ease of manufacturing. Additionally, the methods of manufacturing vaccines and protocols of preventing and/or treating Shigellosis had been carried out in the present invention.

Potential Commercial Applications: *Shigella sonnei* vaccines and diagnostics.

Competitive Advantages:

- Vaccine can be used in both children and adults.
- Doses of vaccine are reduced.
- Immunogen is easy to isolate for easy vaccine production.

Development Stage:

- Prototype.
- Pilot.
- Early-stage.
- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

Inventors: John B. Robbins, Rachel Schneerson, Joanna Kubler-Kielb, Christopher P. Mocca (NICHD).

Publications:

1. Robbins JB, *et al.* Synthesis, characterization, and immunogenicity in mice of Shigella sonnei O-specific oligosaccharide-core-protein conjugates. Proc Natl Acad Sci U S A. 2009 May 12;106(19):7974–7978. [PMID 19346477]
2. Kubler-Kielb J, *et al.* The elucidation of the structure of the core part of the LPS from Plesiomonas shigelloides serotype O17 expressing O-polysaccharide chain identical to the Shigella sonnei O-chain. Carbohydr Res. 2008 Dec 8;343(18):3123–3127. [PMID 18954864].

Intellectual Property: HHS Reference No. E–308–2008/0—

- PCT Application No. PCT/US2009/053897 filed 14 Aug 2009.
- U.S. Application No. 13/059,051 filed 14 Feb 2011.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov.*

Dated: August 29, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–22693 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

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Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301–496–7057; *fax:* 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Antibodies Against TL1A, a TNF-Family Cytokine, for the Treatment and Diagnosis of Autoimmune Inflammatory Diseases

Description of Technology: Autoimmune inflammatory diseases occur in greater than five percent of the United States population; this disease group includes asthma, multiple sclerosis, rheumatoid arthritis, and lupus. Treatments generally include immunosuppressants or anti-inflammatory drugs, which can have serious side effects; recently, more specific immunomodulatory therapies such as TNF-alpha antagonists have been developed.

In experiments with mice, NIAMS inventors have shown that the interaction between the TNF family ligand TL1A with its receptor, DR3, is critical for development of disease in asthma, inflammatory bowel disease and multiple sclerosis. They have also developed anti-TL1A antibodies that prevent disease in mouse models of rheumatoid arthritis and inflammatory bowel disease.

This technology describes anti-mouse TL1A and anti-human TL1A monoclonal antibodies that may be useful for the development of diagnostics and therapeutics for autoimmune inflammatory disease, as well as methods of treating such disease by blocking the interaction between TL1A and DR3.

Potential Commercial Applications:

- Antibody-based therapeutics for autoimmune inflammatory disease.
- Diagnostics for autoimmune inflammatory disease.
- Research tools to probe the role of TL1A–DR3 interactions in the development of autoimmune disease.

Competitive Advantages:

- Specific immunomodulatory effect provides potential for potent therapy without inducing global immunosuppression.
- Anti-TL1A monoclonal antibodies available for further development.

Development Stage:

- Early-stage.
- In vitro data available.
- In vivo data available (animal).

Inventors: Richard M. Siegel, Francoise Meylan, Yun-Jeong Song (NIAMS).

Publication: Meylan F, *et al.* The TNF-family cytokine TL1A drives IL–13-dependent small intestinal inflammation. Mucosal Immunol. 2011 Mar;4(2):172–185. [PMID 20980995].

Intellectual Property:

- HHS Reference No. E–011–2007/0—U.S. Application No. 11/972,395 filed 10 Jan 2008.
- HHS Reference No. E–073–2011/0—U.S. Application No. 61/488,671 filed 20 May 2011.

Related Technology: HHS Reference No. E–072–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Tara L. Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Arthritis and Musculoskeletal and Skin Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the anti-mouse TL1A and anti-human TL1A monoclonal antibodies. For collaboration opportunities, please contact Cecilia Pazman at *pazmance@mail.nih.gov.*

TL1A Transgenic Mice for the Study of Inflammatory Bowel Disease (IBD) and Allergic-Type Immune Responses

Description of Technology: TL1A is a TNF family cytokine that co-stimulates T-cell proliferation and cytokine production through its interactions with the TNF family receptor DR3. TL1A–DR3 interactions have been shown to be important for the development of autoimmune inflammatory diseases, including inflammatory bowel disease (IBD).

In order to probe the role of TL1A–DR3 interactions in IBD, NIAMS inventors have developed transgenic mice that constitutively express TL1A in T cells or in dendritic cells. These mice spontaneously develop inflammatory small bowel pathology that is IL–13 dependent, and that closely resembles intestinal responses to allergens and to nematode infection.

These mice represent a unique model for the study of IBD, and in particular, the role of IL–13 in the development of this disease. They may also be used as a platform for investigating agents that block TL1A–DR3 interactions and the pathology associated with chronic TL1A expression.

Potential Commercial Applications:

- Studies of small bowel inflammation/IBD.
- Studies of the role of TL1A–DR3 interactions in the development of autoimmune inflammatory disease.
- Investigation of TL1A–DR3 blocking agents for the treatment of IBD or other TL1A–DR3 dependent diseases.

Competitive Advantages:

- Lines available with transgene expressed in T cells (under CD2 promoter) or dendritic cells (CD11c promoter).
- Models are IL–13 dependent.
- No major defects in systemic immunity.

Development Stage: In vivo data available (animal).

Inventors: Richard M. Siegel and Francoise Meylan (NIAMS).

Publications:

1. Meylan F, *et al.* The TNF-family cytokine TL1A drives IL–13-dependent small intestinal inflammation. Mucosal Immunol. 2011 Mar;4(2):172–185. [PMID 20980995].
2. Meylan F, *et al.* The TNF-family receptor DR3 is essential for diverse T cell-mediated inflammatory diseases. Immunity. 2008 Jul 18;29(1):79–89. [PMID 18571443].

Intellectual Property: HHS Reference No. E–072–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technologies:

- HHS Reference No. E–011–2007/0—U.S. Application No. 11/972,395 filed 10 Jan 2008.
- HHS Reference No. E–073–2011/0—U.S. Application No. 61/488,671 filed 20 May 2011.

Licensing Contact: Tara L. Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Arthritis and Musculoskeletal and Skin Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize TL1A Transgenic Mice. For collaboration opportunities, please contact Cecilia Pazman at *pazmance@mail.nih.gov.*

Human Monoclonal Antibodies Cross-reacting to Insulin-like Growth Factors IGF–I and IGF–II as Potential Anti-tumor Agents

Description of Technology: The type 1 insulin-like growth factor (IGF) receptor (IGF1R) is over-expressed by many tumors and mediates proliferation, motility, and protection from apoptosis. Agents that inhibit IGF1R expression or function can potentially block tumor growth and metastasis. Its major ligands, IGF–I, and IGF–II are over-expressed by multiple tumor types. Previous studies indicate that inhibition of IGF–I, and/or IGF–II binding to its cognizant receptor negatively modulates signal transduction through the IGF pathway and concomitant cell proliferation and growth. Therefore, use of humanized or fully human antibodies against IGFs

represents a valid approach to inhibit tumor growth.

The present invention discloses the identification and characterization of a fully human monoclonal antibody designated m708.5 that has been affinity maturated against IGF–I and IGF–II and displays extremely high affinities for IGF–I and IGF–II in the picoM range. The m708.5 antibody potently inhibited signal transduction mediated by the IGF–1R interaction with IGF–I and IGF–II and blocked phosphorylation of IGF–IR and the insulin receptor. Further, this antibody inhibited migration in the MCF–7 breast cancer cell line at the picoM range. Therefore, this antibody can be used to prevent binding of IGF–I and/or IGF–II to its concomitant receptor IGFIR, consequently, modulating diseases such as cancer.

Potential Commercial Applications:

- Therapeutic for the treatment of various human diseases associated with aberrant cell growth and motility such as breast, prostate, and leukemia carcinomas.
- Research regent to study IGF–I and/or IGF–II binding and its association with tumor growth.

Competitive Advantages:

- Antibodies against the ligands IGF–I and IGF–II, such as this invention, inhibit the interaction with IGF–IR yet likely do not have the type of toxicity associated with IGF–1R antibodies.
- High concentrations of IGF–II are found in cancer patients, on average several fold higher than IGF–I, thus this cross-reacting IGF–I/IGF–II antibody could be more effective than existing IGF–IR and/or IGF–I currently in the clinic.
- This novel IGF antibody may provide therapeutic intervention for multiple carcinomas.

Development Stage:

- Pre-clinical.
- In vitro data available.

Inventors: Dimiter Dimitrov, Zhongyu Zhu, and Qi Zhao (NCI).

Publications:

1. Zhao Q, *et al.* Human monoclonal antibody fragments binding to insulin-like growth factors 1 and 2 with picomolar affinity. Mol Cancer Ther. 2011 Jul 12; Epub ahead of print. [PMID 21750218].

2. Feng Y, *et al.* Novel human monoclonal antibodies to insulin-like growth factor (IGF)–II that potently inhibit the IGF receptor type I signal transduction function. Mol Cancer Ther. 2006;5(1):114–120. [PMID 18283605].

3. Kimura T, *et al.* Targeting of bone-derived insulin-like growth factor-II by a human neutralizing antibody suppresses the growth of prostate cancer cells in a human bone environment. Clin Cancer Res. 2010 Jan 1;16(1): 121–129. [PMID 20028742].

Intellectual Property: HHS Reference No. E–068–2011/0—U.S. Provisional Application No. 61/474,664 filed 12 April 2011.

Related Technologies:

- HHS Reference No. E–336–2005/0—U.S. Patent Application No. 12/296,328 filed 07 Oct 2008; Antibody Compositions and Methods for Treatment of Neoplastic Disease.
- HHS Reference No. E–217–2005/0—U.S. Patent No. 7,824,681 issued 02 Nov 2010; Human Monoclonal Antibodies that Specifically Bind IGF–II.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

Collaborative Research Opportunity: The NCI CCR Nanobiology Program, Protein Interaction Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact John Hewes, PhD at *hewesj@mail.nih.gov.*

Transgenic Mice Expressing Human Arginase II Gene in Endothelium: Useful for Studying Atherosclerosis and Other Vasculopathies

Description of Technology: Cardiovascular disorders associated with endothelial dysfunction, like atherosclerosis, have decreased endothelial nitric oxide (NO) bioavailability. L-arginine, the primary substrate for endothelial nitric oxide synthase (eNOS), is important in the regulation of NO production. Arginase competes with eNOS for L-arginine and has been implicated in the endothelial dysfunction. NIH investigators have generated transgenic mice with human ArgII (hArgII) gene under control of endothelial-specific Tie2 promoter. In these mice, hArgII was expressed at very high levels in all tissues except liver. Analysis has shown that expression of hArgII was endothelium-specific. Overexpression of hArgII neither led to significant changes in plasma level of arginine, citrulline, NOHA, ADMA, SDMA and ornithine, nor to changes in plasma lipid levels. Level of arginase activity in peritoneal macrophages isolated from the transgenic mice also was also unchanged. However, ArgII overexpression induced signs of endothelial dysfunction. In apoE-knockout mice hArgII led to 2-fold increasing in aortic area with atherosclerotic lesions. The Tie2hArgII transgenic mouse can be useful as a new model for investigating the role of ArgII in endothelial function and development of atherosclerosis.

Potential Commercial Applications:

- Useful to study the role of arginase II gene in endothelium.
- Useful for testing the drugs for treatment of the endothelial dysfunction related to eNOS insufficiency, including hypertension.
- Useful to study mechanisms of atherosclerosis.

Competitive Advantages: Better model system to study functional significance of arginase II.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vivo data available (animal).

Inventors: Boris L. Vaisman and Alan T. Remaley (NHLBI).

Publication: Vaisman BL, *et al.* Abstract 3636: The Effects of Arginase II Overexpression on Endothelial Function in Transgenic Mouse Model. Circulation. 2008 Oct 28;118:S_455.

Intellectual Property: HHS Reference No. E–255–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Suryanarayana (Sury) Vepa, PhD; 301–435–5020; *vepas@mail.nih.gov.*

Dated: August 29, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–22694 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and/or contract Proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: October 14, 2011.

Closed: October 14, 2011, 8:30 to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: October 14, 2011, 11 a.m. to 4 p.m.

Agenda: Opening remarks by the Director of the National Center for Complementary and Alternative Medicine, presentation of a new research initiative, and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, PhD, Executive Secretary, Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–2014.

The public comments session is scheduled from 3:30 to 4 p.m. on October 14, 2011, but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on October 6, 2011. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (October 24, 2011) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

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://www.nccam.nih.gov/about/naccam,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards; 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22695 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: October 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Michelle M. Timmerman, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–4573, *timmermanm@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22697 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, COBRE III.

Date: October 25–26, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Steven Birken, PhD, Scientific Revew Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0815, *birkens@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22700 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: September 13, 2011.

Closed: 8 to 9:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, Maryland 20814.

Open: 9:30 a.m. to 5 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NIH Health Disparities update, and other business of the Council.

Place: The Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, Maryland 20814.

Contact Person: Donna Brooks, Assistant Director for Administration, National Institute on Minority Health and Heath Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 435–2135, *brooksd@ncmhd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22703 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Microbial Pathogens.

Date: September 27–28, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Richard G Kostriken, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Adult Psychopathology and Disorders of Aging.

Date: October 4, 2011.

Time: 8 to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Ave NW., Washington, DC 20037.

Contact Person: Mark Lindner, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22706 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biochemistry and Biophysics of Membranes Study Section, September 26, 2011, 8 a.m. to September 27, 2011, 5 p.m., Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC, 20009 which was published in the **Federal Register** on August 18, 2011, 76 FR 51379.

The meeting will be held September 26, 2011, from 8 a.m. to 7 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22731 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Notice of 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 Advisory Child Health and Human Development Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council

Date: September 22–23, 2011

Open: September 22, 2011, 8 a.m. to 5 p.m.

Agenda: The agenda will include: (1) A report by the Director, NICHD; (2) a report by the Scientific Director, NICHD, and a discussion on the Scientific Visioning initiative.

Place: National Institutes of Health, Building 31, Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Closed: September 23, 2011, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant application.

Place: National Institutes of Health, Building 31, Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848.

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 taxis, 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://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

In order to facilitate public attendance at the open session of Council, reserve seating will be made available to the first five individuals reserving seats in the main meeting room, Conference Room 6. Please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation. Additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://www.nichd.nih.gov/about/overview/advisory/nachhd/virtual-meeting.cfm.* The meeting is partially closed to the public.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS)

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22728 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: ACL, Mechanisms and Osteoporosis.

Date: October 3, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Baljit S. Moonga, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.

Date: October 4–5, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15 AREA Grant Apps: Gastrointestinal/Kidney Pathophysiology, Toxicology/Pharmacology.

Date: October 5, 2011.

Time: 3:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: October 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: William A. Greenberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review

Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: October 6–7, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative: R01s for Clinical Studies of Mental Disorders.

Date: October 6, 2011.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Yvonne Bennett, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Grant Program.

Date: October 6, 2011.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20027.

Contact Person: Yvonne Bennett, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurotechnology 2.

Date: October 6, 2011.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Neurotechnology.

Date: October 6, 2011.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health,6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22707 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Hearing Pain and Olfaction.

Date: September 21–22, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Radiation Therapeutics.

Date: September 22, 2011.

Time: 1 to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Careen K Tang-Toth, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22704 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Translational Research Implementation Program II Review.

Date: September 26, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, MD, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI—Bio-Specimen Repository Exploratory Grants.

Date: September 29, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Giuseppe Pintucci, PhD, Scientific Review Officer, Review Branch/

DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22702 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority and Health Disparities; 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, ZMD1 RN (02) NIMHD Comprehensive Center of Excellence (P60).

Date: September 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Robert Nettey, M.D., Chief, Scientific Review Officer, National Institute on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 496–3996, *netteyr@mail.nih.gov.*

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22698 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, September 13, 2011, 11 a.m. to September 13, 2011, 1:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on August 24, 2011, 76 FR 52958–52959.

The meeting will be held September 15, 2011 9:45 a.m.–1 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: August 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22696 Filed 9–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Department of Homeland Security.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, Department of Homeland Security has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted October 6, 2011.

ADDRESSES: Written comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact: Department of Homeland Security, Office of the Chief Information Office, *dhs.pra@dhs.hq.gov,* 202–343–2496.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received 0 comments in response to the 60-day notice published

in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide The Department of Homeland Security projected average estimates for the next three years:

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 20.

Respondents: 45,098.

Annual Responses: 45,098.

Frequency of Response: Once per Request.

Average Minutes per Response: 8.

Burden Hours: 375,148.

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 control number.

Dated: August 23, 2011.

Richard Spires,

Chief Information Officer.

[FR Doc. 2011–22610 Filed 9–2–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0063]

Homeland Security Advisory Council

AGENCY: The Office of Policy, DHS.

ACTION: Notice of Open Teleconference Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet via teleconference for the purpose of reviewing and deliberating on recommendations by the HSAC's Task Force on Secure Communities.

DATES: The HSAC conference call will take place from 2 p.m. to 3 p.m. EDT on Thursday, September 22, 2011. Please be advised that the meeting is scheduled for one hour and may end early if all business is completed before 1 p.m.

ADDRESSES: The HSAC meeting will be held via teleconference. Members of the public interested in participating in this teleconference meeting may do so by following the process outlined below (see ''Public Participation'').

Written comments must be submitted and received by September 21, 2011. Comments must be identified by Docket No. DHS–2011–0063 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: HSAC@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 282–9207.
- *Mail:* Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0445, 245 Murray Lane, SW., Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and DHS–2011–0063, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Miron at *hsac@dhs.gov* or 202–447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. The HSAC provides independent advice to the Secretary of the Department of Homeland Security to aid in the creation and implementation of critical and actionable policies and capabilities across the spectrum of homeland security operations. The HSAC will meet to review and deliberate on the Task Force on Secure Communities report of findings and recommendations.

Public Participation: Members of the public will be in listen-only mode. The public may register to participate in this HSAC teleconference via afore mentioned procedures. Each individual must provide his or her full legal name, e-mail address and phone number no later than 5 p.m. EDT on September 19, 2011, to a staff member of the HSAC via e-mail at *HSAC@dhs.gov* or via phone at (202) 447–3135. HSAC conference call details and the Task Force on Secure Communities report will be provided to interested members of the public at the time they register.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance during the teleconference, contact Mike Miron (202) 447–3135.

Dated: August 27, 2011.

Becca Sharp,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2011–22618 Filed 9–2–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0674]

Recreational Vessel Accident Reporting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Advisory Committee recommendations; request for additional public comments.

SUMMARY: The Coast Guard has received recommendations from the National Boating Safety Advisory Council (NBSAC) regarding potential ways to improve the recreational boating accident reporting process. NBSAC recommended that the Coast Guard: (1) Use a two-tiered reporting system for boating accidents; and (2) take steps to clarify what, how, and when information is reported. This notice solicits public comment on the NBSAC recommendations, as well as general public comment on the burden involved in reporting accidents, and other alternative means of reporting or collecting information.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before December 5, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0674 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Mr. Jeff Ludwig, Office of Auxiliary and Boating Safety, Boating Safety Division, Coast Guard; telephone 202–372–1061, e-mail

jeffrey.a.ludwig@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the National Boating Safety Advisory Council (NBSAC) recommendations and related questions posed in this notice. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2011–0674), and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* insert ''USCG–2011–0674'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and National Boating Safety Advisory Council recommendations: To view the comments and the National Boating Safety Advisory Council (NBSAC) recommendations, go to *http://www.regulations.gov*. In the ''Keyword'' box insert ''USCG–2011–0674'' and click ''Search.'' If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Basis and Purpose

In 2009, the National Boating Safety Advisory Council (NBSAC) recommended that the Coast Guard revise its accident reporting requirements. NBSAC is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It was established under authority of 46 U.S.C. 13110 and advises the Secretary of the Department of Homeland Security through the Coast Guard on boating safety regulations and other major boating safety matters.

The NBSAC recommendations were intended to help the Coast Guard improve the quality and timeliness of boating accident information. The Coast Guard relies on accident information provided by recreational boat operators to make decisions aimed at improving boating safety. This information, described in title 33 Code of Federal Regulations (CFR) parts 173 and 174, is often collected from the owner or operator of a vessel, who fills out a very detailed Coast Guard Boating Accident Report (BAR, form CG–3865) or a similar form provided by the State reporting authority. After an accident, the owner or operator of a vessel involved must:

- Report the accident to the appropriate State reporting authority within a specified timeframe; and
- Provide the information required in 33 CFR 173.57.

The State reporting authority is then required by 33 CFR 174.101 and 174.121 to:

- Review each report for accuracy and completeness;
- Determine the cause of the accident based on the available information; and
- Forward the accident report to the Coast Guard within 30 days of receiving the report.

The Coast Guard receives reports of boating accidents from the States and other sources and uses this information to meet its statutory responsibilities to promote the safety of the recreational vessel, its associated equipment, and the operator and passengers (see 46 U.S.C. Chapter 43). The Coast Guard also has a statutory obligation to publish statistics on boating safety (see 46 U.S.C. 6102). Each year, information received through the accident reporting system is compiled and published in a report entitled ''Boating Statistics'', Commandant Publication (COMDTPUB) P16754 (series).

Unfortunately, many accidents are not reported, or the information provided by boat owners or operators is often inaccurate or incomplete and frequently becomes available to the Coast Guard long after an accident occurs. Incomplete, inaccurate, or late accident information makes ensuring safe boating conditions more difficult, and may indicate that the accident reporting system could be improved.

To address these issues, NBSAC recommended that the Coast Guard establish a two-tiered notification/reporting system that would ease the reporting burden on the owner or operator of a vessel, but would place more responsibilities on State reporting authorities. NSBAC also recommended a number of steps to be taken to clarify what, how, and when information is reported. The specific NBSAC recommendations can be found in the docket for this notice.

Through this notice and request for comments, the Coast Guard hopes to receive additional information from the public that will help us improve the quality and timeliness of boating accident information. Our goal is to receive information that will allow us to achieve the following:

- Reduce the accident reporting burden on the public;
- Increase the number of accidents reported to the State reporting authorities;
- Improve the timeliness of accident reports; and
- Increase the accuracy and completeness of reports forwarded by the State reporting authorities to the Coast Guard.

In this notice, we specifically seek information and public comments relating to the following questions:

1. Would the States support, and are some States already informally using, the two-tiered accident reporting system that NBSAC has recommended, with the boat operator providing a notification to the State (via local law enforcement, first responder, etc.) and the State reporting authority ensuring that a follow-up investigation is conducted?

2. Would the public support the two-tiered accident reporting system that NBSAC has recommended?

3. Would the two-tiered accident reporting system that NBSAC has recommended improve the number of accident reports received?

4. Would the two-tiered accident reporting system that NBSAC has

recommended improve the accuracy of accident reports received?

5. Would the two-tiered accident reporting system that NBSAC has recommended improve the timeliness of accident reports received?

6. Would the two-tiered accident reporting system that NBSAC has recommended ease the burden of accident reporting on owners or operators of recreational vessels? If so, by how much?

7. Would the two-tiered accident reporting system that NBSAC has recommended increase the burden of accident reporting on State reporting authorities? If so, by how much?

8. Would any additional time (over the current system) be required for the owner/operator in a reporting system where the State had to contact him/her for information? If so, how many minutes of additional time per report would be required for the owner/operator?

9. Would any additional time (over the current system) and/or resources be required for a State employee to complete the report as opposed to the owner/operator? If so, how many minutes of additional time per report and/or what additional resources?

10. How many States currently use an electronic reporting system?

11. How many States are considering using an electronic reporting system?

12. Would the use of an Internet reporting system reduce the time required by the State to report information to the Coast Guard? If so, how many minutes of time per report would be saved?

13. Do any States collect data in addition to what is currently required in 33 CFR 173.57? If so, what additional information is collected?

14. How many boating accident report forms (BAR, CG–3865 or State equivalent forms) does a State receive from the public annually (approximately)?

15. How many boating accidents does a State investigate or cause to be investigated annually (approximately)?

16. How frequently (as a percentage) does a State collect data on an accident for which no BAR form is submitted by the public?

17. Under the current system, do States provide accident reporting information that is the responsibility of the recreational vessel owner or operator? If so, how many man-hours are required to collect this information (please give time as hours per week or month or as an average per accident report)?

18. If a State provides information that is the responsibility of the vessel owner or operator, what is the average time required by a State employee to complete the entire accident report form under the current system?

19. Under the current system, how much time does a State reporting authority spend validating the accident report submitted by a recreational vessel owner or operator (please give time as hours per week or month or as an average per accident report)?

20. Under the current system, what percentage of reports that a State receives from owner/operators are illegible or otherwise unintelligible? How many man-hours are currently required to address these problems (please give time as hours per week or month or as an average per accident report)?

21. Under the current system, when there is missing information from the owner/operator, what is the average amount of time that passes before a State employee is able to contact him/her in order to complete the report? (please give time as hours per week or month or as an average per accident report).

22. Do boat owners/operators have enough information or expertise to provide some or all of the accident reporting data currently required by them in 33 CFR 173.57?

23. What is the average time required for the owner/operator to complete the report under the current system?

24. Does the reporting of some or all of the accident reporting data currently required in 33 CFR 173.57 result in adverse consequences for owners/operators?

25. How can owners or operators of recreational vessels be encouraged to comply with boating accident reporting requirements?

26. What is a reasonable amount of time for a State reporting authority to submit a complete accident investigation report to the Coast Guard?

27. What percentage of a State's accident reports are reported to Coast Guard within 30/60/90 days? What are the significant factors that cause a report to be delayed beyond the 30 days?

28. What is a good definition of an injury that required medical treatment beyond first aid? Should the Occupational Safety and Health Administration (OSHA) standards for ''medical treatment beyond first aid'' be adopted as the standard for recreational boating injury reporting? (see 29 CFR 1904.7(b)(5) for the OSHA standards)

29. How should boating-related swimming incidents be defined? The NBSAC recommendation suggests that incidents where the vessel was being used as a swimming platform and/or a person voluntarily leaves the vessel as the first event, whether the vessel was underway or not, should *not* be considered reportable boating accidents, although it would continue counting incidents involving carbon monoxide poisoning, in-water electrical shock or other boat-related caused accidents.

This notice is issued under authority of 5 U.S.C. 552(a) and 33 CFR part 173.

Dated: August 26, 2011.

James A. Watson,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–22630 Filed 9–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–129S; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–129S, Nonimmigrant Petition Based on Blanket L Petition.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 7, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–129S. Should USCIS decide to revise Form I–129S we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–129S.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *uscisfrcomment@dhs.gov.* When

submitting comments by e-mail, please make sure to add OMB Control No. 1615–0010 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Nonimmigrant Petition Based on Blanket L Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129S; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or others for profit. This form is used by an employer to classify employees as L–1 nonimmigrant intracompany transferees under a blanket L petition approval. USCIS will use the data on this form to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 42,000 responses at .583 hours (35 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,486 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 30, 2011.

Evadne Hagigal,

Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–22619 Filed 9–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Re-Accreditation and Re-Approval of SGS North America, Inc. as a Commercial Gauger

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of SGS North America, Inc., Baytown, Texas, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., Baytown, Texas 78408, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the gauger service requested. Alternatively, inquiries regarding the gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of SGS North America, Inc. as a commercial gauger became effective on April 2011. The next triennial inspection date will be scheduled for April 2014.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1295.

Dated: August 16, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–22717 Filed 9–2–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Re-Accreditation and Re-Approval Intertek Testing Services as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Intertek Testing Services, Corpus Christi, Texas, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Intertek Testing Services/Caleb Brett, Corpus Christi, Texas 78406, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Intertek Testing Services as a commercial gauger and laboratory became effective on April, 2011. The next triennial

inspection date will be scheduled for April 2014.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1295.

Dated: August 16, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–22719 Filed 9–2–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–89]

Notice of Submission of Proposed Information Collection to OMB; McKinney-Vento Technical Assistance Narrative, Matrices, and Reporting Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

McKinney-Vento Technical Assistance (MV–TA) Narrative, Matrices, and Reporting Requirements will allow the Office of Special Needs Assistance Programs (SNAPS) to accurately assess the experience, expertise, and overall capacity of applicants applying for technical assistance funding under the FY2011 McKinney-Vento Technical Assistance Notice of Funding Availability (NOFA). They will also allow SNAPS to monitor and evaluate TA progress over the course of the grant and make necessary interventions. The new format for this type of collection also makes it easier for applicants to apply and report by reducing the time required for filling out an application and reporting forms, while retaining the utility of previous collection methods.

DATES: *Comments Due Date:* October 6, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov,* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: McKinney-Vento Technical Assistance Narrative, Matrices, and Reporting Requirements.

OMB Approval Number: 2506–Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: McKinney-Vento Technical Assistance (MV–TA) Narrative, Matrices, and Reporting Requirements will allow the Office of Special Needs Assistance Programs (SNAPS) to accurately assess the experience, expertise, and overall capacity of applicants applying for technical assistance funding under the FY2011 McKinney-Vento Technical Assistance Notice of Funding Availability (NOFA). They will also allow SNAPS to monitor and evaluate TA progress over the course of the grant and make necessary interventions. The new format for this type of collection also makes it easier for applicants to apply and report by reducing the time required for filling out an application and reporting forms, while retaining the utility of previous collection methods.

Frequency of Submission: Quarterly, monthly, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	10	1		98		980

Total Estimated Burden Hours: 98.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 31, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–22722 Filed 9–2–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–88]

Notice of Submission of Proposed Information Collection to OMB FHA–Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure With Service Members Act

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection involves mortgage loan servicers, ''mortgagees'' that service Federal Housing Administration ''FHA'' insured mortgage loans and the home owners,

''mortgagors'' who are involved with those activities. The new information request for OMB review seeks to combine a couple of existing OMB collections under one comprehensive collection for mortgagees that service FHA-insured mortgage loans and the mortgagors who are the home owners.

DATES: *Comments Due Date:* October 6, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0584) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure with Service Members Act.

OMB Approval Number: 2502–0584.

Form Numbers: HUD–PA 426, HUD–9539, HUD–27011, HUD 50012, HUD–96068–a, and HUD–92070.

Description of the need for the Information and its Proposed Use:

This information collection involves mortgage loan servicers, ''mortgagees'' that service Federal Housing Administration ''FHA'' insured mortgage loans and the home owners, ''mortgagors'' who are involved with those activities. The new information request for OMB review seeks to combine a couple of existing OMB collections under one comprehensive collection for mortgagees that service FHA-insured mortgage loans and the mortgagors who are the home owners.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	7,806	17724.35		0.07887		10,912,800

Total Estimated Burden Hours: 10,912,800.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 30, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–22723 Filed 9–2–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–21]

Announcement of Funding Awards for the Section 202 Supportive Housing for the Elderly Program Fiscal Year 2009

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Section 202 Supportive Housing for the Elderly Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Ms. Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, visit the HUD Website at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Section 202 Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990); the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992); the Rescissions Act (Pub. L. 104–19, enacted on July 27, 1995); the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000); the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009).

The competition was announced in the SuperNOFA published in the **Federal Register** on September 1, 2009. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.157.

The Section 202 program is the Department's primary program for providing affordable housing for the elderly that allows them to live independently with supportive services. Under this program, HUD provides funds to private non-profit organizations and consumer cooperatives to develop supportive housing for the elderly. Funds are also provided to subsidize the

expenses to operate the housing projects.

A total of $453,158,000 was awarded to 101 projects for 3,017 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the awardees and amounts of the awards in Appendix A of this document.

Dated: August 17, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—Section 202 Supportive Housing for the Elderly

Alabama

Dothan, AL
Bnai Brith Housing Inc
Co-Sponsor: Wiregrass Foundation
Capital Advance: $4,007,200
Three-year Rental Subsidy: $354,600
Number of units: 37

Citronelle, AL
Order of AHEPA William G Helis Chapter No 310
Co-Sponsor: AHEPA of Mobile Inc
Capital Advance: $3,968,400
Three-year Rental Subsidy: $354,600
Number of units: 37

Alaska

Anchorage, AK
Anchorage Neighborhood Housing Services, Inc
Capital Advance: $4,362,900
Three-year Rental Subsidy: $412,200
Number of units: 20

Arizona

Tucson, AZ
Family Housing Resources, Inc.
Capital Advance: $4,679,400
Three-year Rental Subsidy: $427,200
Number of units: 43

Arkansas

Little Rock, AR
Christopher Homes of Arkansas
Capital Advance: $1,922,800
Three-year Rental Subsidy: $178,200
Number of units: 20

California

Auburn, CA
Mercy Housing California
Capital Advance: $6,073,600
Three-year Rental Subsidy: $505,200

North Hollywood, CA
Menorah Housing Foundation
Capital Advance: $12,953,300
Three-year Rental Subsidy: $1,403,700
Number of units: 82

Rialto, CA
TELACU
Capital Advance: $11,850,400
Three-year Rental Subsidy: $1,282,200
Number of units: 75

San Francisco, CA
Mercy Housing California
Capital Advance: $12,936,600
Three-year Rental Subsidy: $1,566,300
Number of units: 87

Colorado

Longmont, CO
Longmont Housing Development Corp.
Capital Advance: $6,802,700
Three-year Rental Subsidy: $539,400
Number of units: 50

Connecticut

Cornwall, CT
Cornwall Housing Corporation
Capital Advance: $752,900
Three-year Rental Subsidy: $73,200
Number of units: 5

Cornwall, CT
Cornwall Housing Corporation
Capital Advance: $752,900
Three-year Rental Subsidy: $73,200
Number of units: 5

Waterbury, CT
Grace Development Corporation
Capital Advance: $6,173,900
Three-year Rental Subsidy: $598,800
Number of Units: 41

Florida

Fort Myers, FL
Diocese of Venice
Capital Advance: $9,724,600
Three-year Rental Subsidy: $691,200
Number of Units: 68

Pembroke Pines, FL
Miami Jewish Home & Hospital
Capital Advance: $10,634,700
Three-year Rental Subsidy: $762,300
Number of Units: 75

Georgia

Atlanta, GA
National Church Residences
Capital Advance: $3,906,300
Three-year Rental Subsidy: $343,200
Number of Units: 36

Cairo, GA
Family Worship Center Church of God
Capital Advance: $1,443,200
Three-year Rental Subsidy: $137,400
Number of Units: 14

Savannah, GA
United Church Residence
Capital Advance: $4,337,800
Three-year Rental Subsidy: $382,200
Number of Units: 40

Hawaii

Hilo, HI
Hawaii Island Community Dev. Corp.
Capital Advance: $1,042,500
Three-year Rental Subsidy: $72,300
Number of Units: 5

Hilo, HI
Hawaii Island Community Dev. Corp.
Capital Advance: $1,042,500
Three-year Rental Subsidy: $72,300
Number of Units: 5

Hilo, HI
Hawaii Island Community Dev. Corp.
Capital Advance: $1,042,500
Three-year Rental Subsidy: $72,300
Number of Units: 5

Hilo, HI
Hawaii Island Community Dev. Corp.
Capital Advance: $1,042,500
Three-year Rental Subsidy: $72,300
Number of Units: 5

Hilo, HI
Hawaii Island Community Dev. Corp.
Capital Advance: $1,085,400
Three-year Rental Subsidy: $57,900
Number of Units: 5

Hilo, HI
Hawaii Island Community Dev. Corp.
Capital Advance: $1,042,500
Three-year Rental Subsidy: $72,300
Number of Units: 5

Hilo, HI
Hawaii Island Community Dev. Corp.
Capital Advance: $1,042,500
Three-year Rental Subsidy: $72,300
Number of Units: 5

Hilo, HI
Hawaii Island Community Dev. Corp.
Capital Advance: $1,042,500
Three-year Rental Subsidy: $72,300
Number of Units: 5

Idaho

Boise, ID
Mercy Housing Idaho Inc.
Capital Advance: $4,297,700
Three-year Rental Subsidy: $429,600
Number of Units: 42

Illinois

Chicago, IL
Cath Charities Hsg Devl Corp
Capital Advance: $6,617,100
Three-year Rental Subsidy: $490,500
Number of Units: 42

McHenry, IL
Luth Social Service of Illinois
Capital Advance: $9,487,100
Three-year Rental Subsidy: $689,100
Number of Units: 60

Rushville, IL
West Central Illinois Area Agency on Aging
Capital Advance: $2,076,300
Three-year Rental Subsidy: $175,200
Number of Units: 15

Indiana

Culver, IN
Garden Court, Inc.
Capital Advance: $1,445,600
Three-year Rental Subsidy: $144,000
Number of Units: 13

Mishawaka, IN
AHEPA National Housing Corporation
Capital Advance: $5,817,300
Three-year Rental Subsidy: $553,500
Number of Units: 50

Iowa

Ft. Madison, IA
West Central Illinois Area Agency on Aging
Capital Advance: $2,108,100
Three-year Rental Subsidy: $141,600
Number of Units: 14

Manning, IA
Manning Community Services, Inc.
Capital Advance: $903,500
Three-year Rental Subsidy: $60,900
Number of Units: 6

Kansas

Kansas City, KS
Roswell Church of Christ
Capital Advance: $5,158,700
Three-year Rental Subsidy: $463,200
Number of Units: 41

Kentucky

Louisville, KY
Catholic Charities of Louisville
Capital Advance: $2,763,200
Three-year Rental Subsidy: $249,600
Number of Units: 24

Louisiana

Abbeville, LA
Diocese of Lafayette
Capital Advance: $1,019,300
Three-year Rental Subsidy: $93,000
Number of Units: 10

Kaplan, LA
Diocese of Lafayette
Capital Advance: $1,019,300
Three-year Rental Subsidy: $83,700
Number of Units: 10

Maine

Saco, ME
VOANNE
Capital Advance: $2,363,200
Three-year Rental Subsidy: $182,100
Number of Units: 15

Saco, ME
VOANNE
Capital Advance: $2,520,800
Three-year Rental Subsidy: $194,100
Number of Units: 16

Maryland

Baltimore, MD
Associated Catholic Charities
Capital Advance: $5,980,900
Three-year Rental Subsidy: $566,400
Number of Units: 47

Silver Spring, MD
National Caucus & Center on Black Aged
Co-Sponsor: Korean Community Service Center of Greater Washington
Capital Advance: $3,812,100
Three-year Rental Subsidy: $331,200
Number of Units: 27

Massachusetts

Boston, MA
Rogerson Communities, Inc
Capital Advance: $5,688,600
Three-year Rental Subsidy: $573,300
Number of Units: 37

Ludlow, MA
HAP, INC
Capital Advance: $4,391,300
Three-year Rental Subsidy: $434,100
Number of Units: 28

Michigan

Davison, MI
Taekens Terrace Nonprofit Christian Ministries
Capital Advance: $8,390,800
Three-year Rental Subsidy: $757,500
Number of Units: 61

Grand Rapids, MI
The Citizens for Better Living Inc.
Capital Advance: $3,512,200
Three-year Rental Subsidy: $372,000
Number of Units: 36

Minnesota

Minneapolis, MN
CommonBond Communities
Co-Sponsor: American Indian Community Development Corporation
Capital Advance: $6,778,000
Three-year Rental Subsidy: $566,400
Number of Units: 47

Minneapolis, MN
CommonBond Communities
Co-Sponsor: Plymouth Church Neighborhood Foundation
Capital Advance: $6,056,900
Three-year Rental Subsidy: $506,100
Number of Units: 42

Mississippi

Gautier, MS
VOA Southeast, Inc.
Capital Advance: $2,012,800
Three-year Rental Subsidy: $271,800
Number of Units: 20

Picayune, MS
VOA Southeast, Inc.
Capital Advance: $1,195,400
Three-year Rental Subsidy: $108,300
Number of Units: 12

Missouri

St. Louis, MO
Lutheran Sr Svcs
Capital Advance: $4,995,600
Three-year Rental Subsidy: $428,700
Number of Units: 36

St. Louis, MO
Ahepa 53 Inc
Co-Sponsor: AHEPA National Housing Corporation
Capital Advance: $4,995,600
Three-year Rental Subsidy: $428,700
Number of Units: 36

Nebraska

Papillion, NE
Immanuel Health Sys
Capital Advance: $2,409,300
Three-year Rental Subsidy: $203,400
Number of Units: 20

Nevada

Las Vegas, NV
Accessible Space, Inc.
Capital Advance: $4,665,100
Three-year Rental Subsidy: $385,200
Number of Units: 34

New Hampshire

Campton, NH
SNHS Management Corporation
Capital Advance: $2,520,800
Three-year Rental Subsidy: $188,700
Number of Units: 16

Manchester, NH
SNHS Management Corporation
Capital Advance: $3,151,000
Three-year Rental Subsidy: $235,800
Number of Units: 20

Plymouth, NH
SNHS Management Corporation
Capital Advance: $2,520,800
Three-year Rental Subsidy: $188,700
Number of Units: 16

Plymouth, NH
SNHS Management Corporation
Capital Advance: $2,520,800
Three-year Rental Subsidy: $188,700
Number of Units: 16

New Jersey

Basking Ridge, NJ
Ridge Oak Management Inc
Capital Advance: $3,151,000
Three-year Rental Subsidy: $423,900
Number of Units: 20

Rahway, NJ
The Domus Corp
Co-Sponsor: Cath Char of the Archdiocese of Newark
Capital Advance: $8,069,100
Three-year Rental Subsidy: $1,059,300
Number of Units: 51

Teaneck, NJ
Geriatric Ser, Inc
Capital Advance: $9,782,100
Three-year Rental Subsidy: $1,292,100
Number of Units: 62

New York

Bronx, NY
The Hebrew Home for the Aged at Riverdale
Capital Advance: $9,329,600
Three-year Rental Subsidy: $1,419,300
Number of Units: 59

Bronx, NY
Highbridge Community HDFC Inc
Capital Advance: $9,802,200

Three-year Rental Subsidy: $1,492,800
Number of Units: 62

Brooklyn, NY
Cypress Hills Local Development Corp.
Capital Advance: $8,541,800
Three-year Rental Subsidy: $1,296,900
Number of Units: 54

Dewitt, NY
Christopher Community
Capital Advance: $4,803,500
Three-year Rental Subsidy: $455,400
Number of Units: 37

Henrietta, NY
Episcopal Senior Life Communities
Capital Advance: $2,617,700
Three-year Rental Subsidy: $247,200
Number of Units: 20

Webster, NY
Continuing Development Services
Capital Advance: $2,617,700
Three-year Rental Subsidy: $247,200
Number of Units: 20

North Carolina

Carthage, NC
St. Joseph of the Pines
Capital Advance: $2,747,500
Three-year Rental Subsidy: $187,200
Number of Units: 19

Charlotte, NC
Retirement Housing Foundation
Capital Advance: $7,216,700
Three-year Rental Subsidy: $488,700
Number of Units: 48

Rockingham, NC
John H. Wellons Foundation Inc
Capital Advance: $2,843,800
Three-year Rental Subsidy: $197,700
Number of Units: 19

Rockingham, NC
John H. Wellons Foundation Inc
Capital Advance: $2,843,800
Three-year Rental Subsidy: $197,700
Number of Units: 19

Salisbury, NC
Catholic Diocese of Charlotte Housing Corp.
Co-Sponsor: North Carolina Housing Foundation, Incorporated
Capital Advance: $2,876,100
Three-year Rental Subsidy: $187,200
Number of Units: 19

North Dakota

Jamestown, ND
Lutheran Social Services Housing, Incorporated
Capital Advance: $2,951,000
Three-year Rental Subsidy: $186,900
Number of Units: 20

Ohio

Batavia, OH
Clermont Senior Services
Capital Advance: $4,630,200
Three-year Rental Subsidy: $435,000
Number of Units: 40

Bedford Hts, OH
National Church Residences
Capital Advance: $5,138,600
Three-year Rental Subsidy: $496,800
Number of Units: 40

Bellefontaine, OH
Housing Service Alliance
Co-Sponsor: Tri-County Community Action
Capital Advance: $1,223,200
Three-year Rental Subsidy: $121,200
Number of Units: 11

Kettering, OH
Franklin Foundation
Capital Advance: $2,663,600
Three-year Rental Subsidy: $256,500
Number of Units: 24

Marion, OH
Lutheran Social Services of OH
Capital Advance: $1,223,200
Three-year Rental Subsidy: $121,200
Number of Units: 11

North Orange, OH
Franklin Foundation
Capital Advance: $2,246,900
Three-year Rental Subsidy: $209,100
Number of Units: 20

Oklahoma

Seminole, OK
Central Oklahoma Community Action
Capital Advance: $1,244,200
Three-year Rental Subsidy: $105,600
Number of Units: 12

Shawnee, OK
Native American Housing Services
Capital Advance: $2,059,600
Three-year Rental Subsidy: $182,100
Number of Units: 20

Oregon

Cascade Locks, OR
Columbia Cascade Housing Corporation
Capital Advance: $1,633,800
Three-year Rental Subsidy: $129,300
Number of Units: 13

Pennsylvania

Philadelphia, PA
Cath Health Care Ser Diocese Philadelphia
Capital Advance: $9,811,200
Three-year Rental Subsidy: $990,600
Number of Units: 63

Verona, PA
National Church Residences
Capital Advance: $5,117,600
Three-year Rental Subsidy: $438,300
Number of Units: 40

Rhode Island

South Kingstown, RI
Women's Development Corp
Capital Advance: $3,151,000
Three-year Rental Subsidy: $288,900
Number of Units: 20

South Carolina

Loris, SC
Horry County Council on Aging Inc
Capital Advance: $3,324,400
Three-year Rental Subsidy: $268,200
Number of Units: 28

Tennessee

Johnson City, TN
Metropolitan Housing and CDC, Inc.
Capital Advance: $2,282,000
Three-year Rental Subsidy: $182,100
Number of Units: 20

Lebanon, TN
Cumberland Regional Development Corp.
Capital Advance: $3,919,000
Three-year Rental Subsidy: $313,200
Number of Units: 35

Monterey, TN
Volunteer Housing Development Corp
Capital Advance: $1,184,900
Three-year Rental Subsidy: $92,100
Number of Units: 11

Texas

Alton, TX
National Farm Workers Service Center Incorporated
Capital Advance: $3,579,700
Three-year Rental Subsidy: $381,600
Number of Units: 41

Gonzales, TX
George Gervin Youth Center, Inc.
Capital Advance: $727,400
Three-year Rental Subsidy: $76,500
Number of Units: 8

Houston, TX
AHEPA National CORP.
Capital Advance: $4,744,700
Three-year Rental Subsidy: $464,700
Number of Units: 45

Lubbock, TX
National Church Residences
Co-Sponsor: North & East Lubbock Comm Devl
Capital Advance: $6,173,400
Three-year Rental Subsidy: $651,900
Number of Units: 66

San Antonio, TX
George Gervin Youth Center, Inc.
Capital Advance: $3,996,100
Three-year Rental Subsidy: $381,600
Number of Units: 41

Utah

Vernal, UT
Uintah Basin Assistance Council
Capital Advance: $2,320,100
Three-year Rental Subsidy: $193,200
Number of Units: 20

Vermont

Vergennes, VT
Addison County Community Trust
Capital Advance: $1,260,400
Three-year Rental Subsidy: $94,800
Number of Units: 8

Virginia

Rocky Mount, VA

Metropolitan Housing and CDC, Inc.
Capital Advance: $5,351,500
Three-year Rental Subsidy: $474,000
Number of Units: 44

Woodstock, VA
Shenandoah Area Agency on Aging
Capital Advance: $1,337,800
Three-year Rental Subsidy: $118,500
Number of Units: 11

Washington

Omak, WA
Okonogan County Community Action Council
Capital Advance: $1,158,500
Three-year Rental Subsidy: $101,100
Number of Units: 10

White Center, WA
Providence Health Services
Capital Advance: $8,297,800
Three-year Rental Subsidy: $767,400
Number of Units: 55

Wisconsin

Franklin, WI
CommonBond Communities
Capital Advance: $4,090,200
Three-year Rental Subsidy: $339,000
Number of Units: 30

Wyoming

Sheridan, WY
Volunteers of America
Capital Advance: $2,130,900
Three-year Rental Subsidy: $131,100
Number of Units: 15

[FR Doc. 2011–22727 Filed 9–2–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID No. BOEM–2011–0020]

Information Collection Activity: Unitization, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Unitization (OMB Control No. 1010–0068). This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by October 6, 2011.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0068). Please also submit a copy of your comments to BOEMRE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled, Enter Keyword or ID, enter BOEM–2011–0020 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- E-mail *cheryl.blundon@boemre.gov*. Mail or hand-carry comments to: Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0068 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review). You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart M, Unitization.

OMB Control Number: 1010–0068.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Section 1334(a) specifies that the Secretary ''provide for the prevention of waste and conservation of the natural resources of the [O]uter Continental Shelf, and the protection of correlative rights therein'' and include provisions for ''unitization, pooling, and drilling agreements.''

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Unitization requests for approval are subject to cost recovery, and BOEMRE regulations specify service fees for these requests.

Regulations implementing these responsibilities are under 30 CFR 250, subpart M. Responses are required to obtain or retain a benefit and mandatory. No questions of a sensitive nature are asked. BOEMRE protects information considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), and 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection,'' and 30 CFR part 252, ''OCS Oil and Gas Information Program.''

BOEMRE must approve any lessee's proposal to enter an agreement to unitize operations under two or more leases and for modifications when warranted. Lessees submit consolidated Exploration Plans and Development and Production Plans for a unit area. We use the information to ensure that operations under the proposed unit agreement will result in preventing waste, conserving natural resources, and protecting correlative rights including the government's interests.

Frequency: On occasion.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or holders of pipeline-rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 3,348 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart M	Reporting requirement	Hour burden	Average number annual responses	Annual burden hours
		Non-hour cost burdens*		

Citation 30 CFR 250 subpart M	Reporting requirement	Hour burden	Average number annual responses	Annual burden hours
Requests				
1301	Description of requirements	Burden included in the following sections.		0
1301(d), (f)(3), (g)(1), (g)(2) (ii).	Request suspension of production or operations	Burden covered in 1010–0114.		0
1302(b)	Request preliminary determination on competitive reservoir.	80	1 request	80
1304(b)	Request compulsory unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, obtain approval of Regional Supervisor if required, and supporting data; serving non-consenting lessees with documents.	205	1 request	205
1304(d)	Request hearing on required unitization	1	1 request	1
Subtotal			3 responses	285
Submittals				
1302(b)	Submit concurrence or objection on competitiveness with supporting evidence.	35	1 request	35
1302(c), (d)	Submit joint plan of operations, supplemental plans, or a separate plan if agreement cannot be reached.	45	1 plan	45
1303; 1304	**Submit revisions or modifications to unit agreement, unit operating agreement, plan of operation, change of unit operator, etc.	8	50 revs/mods	400
		$831 fees × 50 revisions/modifications = $41,550.		
1303; 1304	**Submit initial, and revisions to, participating area	54	10 submissions	540
1304(d)	Submit statement at hearing on compulsory unitization.	5	1 statement	5
1304(e)	Pay for and submit three copies of verbatim transcript of hearing.	1	1 submission	1
		Court reporter and 3 transcript copies for 1 hearing = $500.		
Subtotal			64 responses	1,026
			$42,050 non-hour cost burdens.	
General				
1303	Apply for voluntary unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, obtain approval of Regional Supervisor if required, and supporting data; request for variance from model agreement and other related requirements.	185	11 applications/plans	2,035
		$11,698 fee × 11 applications/plans = $128,678.		
1304(f)	Appeal final order of compulsory unitization	Exempt as defined in 5 CFR 1320.4(a)(2), (c).		0
1300–1304	General departure and alternative compliance requests not specifically covered elsewhere in subpart M regulations.	1	2 requests	2
Subtotal			13 responses	2,037
			$128,678 non-hour cost burdens.	
Total Burden			80 responses	3,348

Citation 30 CFR 250 subpart M	Reporting requirement	Hour burden	Average number annual responses	Annual burden hours
			$170,728 Non-Hour Cost Burdens.	

* The non-hour cost burdens that are associated with cost recovery monies collected are based on actual submittals through Pay.gov for FY 2010.
** These requirements are specified in each Unit Agreement.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified three non-hour cost burdens associated with this information collection. Section 250.1303 requires respondents to pay filing fees when (1) Applying for a voluntary unitization proposal or unit expansion ($11,698), as well as a (2) unitization revision ($831). The filing fees are required to recover the Federal Government's processing costs. Section 250.1304(d) provides an opportunity for parties notified of compulsory unitization to request a hearing; therefore § 250.1304(e) requires the party seeking the compulsory unitization to (3) pay for the court reporter and three copies of the verbatim transcript of the hearing (approximately $500).

It should be noted there have been no such hearings in the recent past, and none are expected in the near future. We estimate a total reporting non-hour cost burden of $170,728. We have not identified any other paperwork non-hour cost burdens associated with the collection of information.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents.

To comply with the public consultation process, on May 13, 2011, we published a **Federal Register** notice (76 FR 28058) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

Send any comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 6, 2011.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: August 22, 2011.

Sharon Buffington,

Acting Office of Offshore Regulatory Programs.

[FR Doc. 2011–22651 Filed 9–2–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[BOEM–2011–0039]

Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Department of the Interior.

ACTION: Request for comment.

SUMMARY: BOEMRE will use Form 0008 to issue commercial renewable energy leases on the Outer Continental Shelf. In the preamble to the April 29, 2009, Final Rule, "Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf," BOEMRE stated that "we intend to develop a model lease form through a public process that will invite all interested and affected parties for their input" (at p. 19729).

The bureau has developed the form included in this notice, and welcomes comments over the 30 days following publication of this notice. Following the 30-day comment period, BOEMRE will review all submitted comments, and publish a final version of the form in the **Federal Register**.

DATES: Submit written comments by October 6, 2011.

FOR FURTHER INFORMATION CONTACT: Maureen A. Bornholdt, Program Manager, Office of Offshore Alternative Energy Programs at (703) 787–1300 for lease questions.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled "Enter Keyword or ID," enter docket BOEM–2011–0039 then click "search." Follow the instructions to submit public comments and view supporting and related materials. BOEMRE will post all comments on *http://www.regulations.gov.*
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Wright Frank; 381 Elden Street, MS–4090, Herndon, Virginia 20170. Please reference the docket number and title in your comment and include your name and return address.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. 1331 *et seq.*

Dated: July 20, 2011.

Robert P. LaBelle,

Acting Associate Director for Offshore Energy and Minerals Management.

BILLING CODE 4310–MR–P

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT **COMMERCIAL LEASE OF SUBMERGED LANDS FOR RENEWABLE ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF** ***Paperwork Reduction Act of 1995 statement:*** *This form does not constitute an information collection as defined by 44 U.S.C. § 3501 et seq. and therefore does not require approval by the Office of Management and Budget.*	Office	Renewable Energy Lease Number
	Cash Bonus and/or Acquisition Fee:	Resource Type
	Effective Date	Block Number(s)

This lease is effective on the first day of the month following the date it is signed by the Lessor ("Effective Date") and will continue until the lease terminates as set forth in Addendum "B," by and between the United States of America, ("Lessor") acting through the Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEMRE"), its authorized officer, and

Lessee	Interest Held

("Lessee"). In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, covenants, and stipulations contained herein and attached hereto, the Lessee and Lessor agree as follows:

Section 1: Statutes and Regulations.

This lease is issued pursuant to subsection 8(p) of the Outer Continental Shelf Lands Act ("the Act"); 43 U.S.C. §§ 1331 *et seq.* This lease is subject to the Act and regulations promulgated pursuant to the Act including but not limited to offshore renewable energy and alternate use regulations at 30 C.F.R. Part 285 as well as other applicable statutes and regulations. This lease is also subject to applicable laws hereafter enacted and regulations hereafter promulgated, except to the extent subsequent regulations are inconsistent with an express provision hereof. Lessee's actions that are taken pursuant to this lease, are subject to the terms and conditions of this lease, including all Addenda, and applicable laws and regulations.

Section 2: Rights of the Lessee.

(a) Lessor hereby grants and leases to Lessee the exclusive right and privilege, subject to the terms and conditions of this lease and applicable regulations, to: (1) submit to Lessor for approval a proposed Site Assessment Plan (SAP) and/or Construction and Operations Plan (COP) for the project identified in Addendum "A" of this lease; and (2) conduct activities in the area identified in Addendum A of this lease ("leased area") that are described in a plan that has been approved by Lessor. This lease does not, by itself, authorize any activity within the leased area.

(b) The rights granted to the Lessee herein are limited to those activities described in any SAP or COP subsequently approved by Lessor.

(c) This lease does not authorize the Lessee to conduct activities on the Outer Continental Shelf (OCS) relating to or associated with the exploration for, or development or production of, oil, gas, other seabed minerals, or renewable energy resources other than those renewable energy resources identified in this lease.

Section 3: Reservations to Lessor.

(a) All rights in the leased area not expressly granted to the Lessee by the Act, applicable regulations, this lease or in any approved plan are hereby reserved to the Lessor.

(b) Lessor will decide whether to approve a proposed SAP or COP in accordance with the applicable regulations in 30 C.F.R. Part 285. The Lessor retains the right to disapprove a proposed SAP or COP, without liability to the Lessee, based on the Lessor's determination that the proposed activities would have unacceptable environmental consequences, would conflict with one or more of the requirements set forth in subsection 8(p)(4) of the Act (43 U.S.C. § 1337(p)(4)), or for other reasons provided by BOEMRE pursuant to 30 C.F.R. § 285.613(e)(2) or 30 C.F.R. § 285.628(f)(2). The Lessor also retains the right to approve with modifications proposed plans as provided in applicable regulations.

(c) The Lessor reserves the right to suspend Lessee's operations in accordance with the national security and defense provisions of section 12 of the Act and applicable regulations.

(d) The Lessor reserves the right to authorize other uses within the leased area that will not unreasonably interfere with activities authorized under this lease.

Section 4: Payments.

(a) The Lessee must make all rent payments in accordance with applicable regulations in 30 C.F.R. Part 285, unless otherwise specified in Addendum "B".

(b) The Lessee must make all operating fee payments in accordance with applicable regulations in 30 C.F.R. Part 285, as specified in Addendum "B".

Section 5: Plans.

The Lessee may conduct activities authorized by this lease only in accordance with plans approved by Lessor. The Lessee may not deviate from an approved plan except as provided in applicable regulations in 30 C.F.R. Part 285.

Section 6: Associated Project Easements.

Pursuant to 30 C.F.R. § 285.200(b), the Lessee has the right to one or more project easements without further competition for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease under applicable regulations in 30 C.F.R. Part 285. As part of submitting a proposed COP for approval, Lessee may request that one or more easement(s) be granted by Lessor. Such project easements will be granted by the Lessor in accordance with the Act and applicable regulations in 30 C.F.R. Part 285 upon approval of the COP in which the Lessee has demonstrated a need for such easements. Such easements must be in a location acceptable to Lessor, and subject to such conditions as Lessor may require. The project easement(s) that would be issued in conjunction with an approved plan under this lease is/are described in Addendum "D".

Section 7: Conduct of Activities.

The Lessee must conduct and agrees to conduct all activities in the leased area in accordance with all approved plans, applicable laws and regulations.

The Lessee further agrees that no activities authorized by this lease will be carried out in a manner that:

(a) could interfere with or endanger other activities or operations carried out under any lease issued or maintained pursuant to the Act, or under any other license or approval from any Federal agency granted before the issuance of this lease, or that could unreasonably interfere with or endanger such activities or operations approved after the issuance of this lease;

(b) could cause any undue harm or damage to the environment;

(c) could create hazardous or unsafe conditions; or

(d) could adversely affect sites, structures, or objects of historical, cultural, or archaeological significance, without notice to and direction from the Lessor on how to proceed.

Section 8: Violations, Suspensions, Cancellations, and Remedies.

If the Lessee fails to comply with (1) any of the applicable provisions of the Act or regulations, (2) the approved plans, or (3) the terms of this lease, including associated Addenda "A", "B", "C", and "D", the Lessor may exercise any of the remedies that are provided under the Act and applicable regulations, including, without limitation, issuance

of cessation of operations orders, suspension or cancellation of the lease, and/or the imposition of penalties.

Lessor may also cancel this lease for reasons set forth in subsection 5(a)(2) of the Act (43 U.S.C. § 1334(a)(2)), or for other reasons provided by Lessor pursuant to 30 C.F.R. § 285.437.

Non-enforcement by the Lessor of a remedy for any particular violation of the applicable provisions of the Act or regulations, or the terms of this lease shall not prevent the Lessor from exercising any remedy, including cancellation of this lease, for any other violation or for the same violation occurring at any other time.

Section 9: Indemnification.

The Lessee hereby agrees to indemnify the Lessor for, and hold the Lessor harmless from, any claim, including claims for loss or damage to natural resources, or for the release of any petroleum or any Hazardous Materials or other environmental injury of any kind or other damage to property, injury to persons or costs or expenses incurred by the Lessor caused by or resulting from any of Lessee's operation or activities on the leased area or project easements or arising out of any activities conducted by or on behalf of the Lessee or its employees, contractors (including Operator, if applicable), subcontractors, or their employees, under this lease, *provided*, that Lessee shall not be liable for any losses or damages proximately caused by the activities of the Lessor or Lessor's employees, contractors, subcontractors, or their employees. The Lessee shall pay the Lessor for damage, cost, or expense due and pursuant to this section within 90 days after written demand by the Lessor. Nothing in this lease shall be construed to waive any liability or relieve Lessee from any penalties, sanctions, or claims that would otherwise apply by statute, regulation, operation of law, or imposed by the Lessor or other government agency acting under such laws.

"Hazardous Material" means

1. Any substance or material defined as hazardous, a pollutant, or a contaminant under the Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C. §§ 9601(14) and (33);
2. Any regulated substance as defined by the Resource Conservation and Recovery Act ("RCRA") at 42 U.S.C. § 6991, whether or not contained in or released from underground storage tanks, and any hazardous waste regulated under RCRA pursuant to 42 U.S.C. §§ 6921 *et seq.*;
3. Oil, as defined by the Clean Water Act at 33 U.S.C. § 1321(a) and the Oil Pollution Act at 33 U.S.C. § 2701(23); or
4. Other substances that applicable Federal, state, tribal, or local laws define and regulate as "hazardous."

Section 10: Financial Assurance.

The Lessee must provide and maintain at all times a surety bond(s) or other form(s) of financial assurance approved by the Lessor in the amount specified in Addendum "B". If, at any time during the term of this lease, the Lessor requires additional financial assurance, then the Lessee shall furnish the additional financial assurance required by the Lessor in a form acceptable to Lessor within ninety (90) days after receipt of Lessor's notice of such adjustment.

Section 11: Assignment or Transfer of Lease.

This lease may not be assigned or transferred in whole or in part without written approval of the Lessor. The Lessor reserves the right, in its sole discretion, to deny approval of the Lessee's application to transfer or assign all or part of this lease. Any assignment will be effective on the date the Lessor approves the Lessee's application. Any assignment made in contravention of this section is void.

Section 12: Relinquishment of Lease.

The Lessee may relinquish this entire lease or any officially designated subdivision thereof by filing with the appropriate office of the Lessor a written relinquishment application, in accordance with applicable regulations in 30 C.F.R. Part 285. No relinquishment of this lease or any portion thereof will relieve the Lessee or its surety of the obligations accrued hereunder, including but not limited to, the responsibility to remove property and restore the leased area pursuant to section 13 of this Lease and applicable regulations.

Section 13: Removal of Property and Restoration of the Leased Area on Termination of Lease.

The Lessee must remove or decommission all facilities, projects, cables, pipelines, and obstructions and clear the seafloor of all obstructions created by activities on the leased area, including any project easements within two years following lease termination, whether by expiration, cancellation, contraction, or relinquishment, in accordance with any approved plan and applicable regulations in 30 C.F.R. Part 285.

Section 14: Safety Requirements.

The Lessee must:

a. maintain all places of employment for activities authorized under this lease in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating under this lease;

b. maintain all operations within the leased area in compliance with regulations in 30 C.F.R. Part 285 and orders intended to protect persons, property and the environment on the OCS; and

c. allow prompt access, at the site of any operation or activity that is subject to safety regulations, to any inspector authorized by the BOEMRE or other Federal agency having jurisdiction and must provide any requested documents and records, which are pertinent to occupational or public health, safety, or environmental protection.

Section 15: Debarment Compliance.

The Lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations as set forth in 2 C.F.R. Parts 180 and 1400 and must communicate the requirement to comply with these regulations to persons with whom it does business related to this lease by including this requirement in all relevant contracts and transactions.

Section 16: Notices.

All notices or reports provided to Lessor by the Lessee under the terms of this lease must be in writing, except as provided herein. Written notices must be delivered to the party's Lease Representative electronically, by hand, by facsimile, or by United States first class mail, adequate postage prepaid, to the specific persons listed in Addendum "A". Either party may notify the other of a change of address by doing so in writing. Until notice of any change of address is delivered as provided in this section, the last recorded address of either party will be deemed the address for all notices required under this lease. For all operational matters, notices must be provided to the party's Operations Representative as well as the Lease Representative.

Section 17: Severability Clause.

If any provision of this lease is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this lease will remain in full force and effect.

	The United States of America
Lessee	Lessor
(Signature of Authorized Officer)	(Signature of Authorized Officer)
(Name of Signatory)	(Name of Signatory)
(Title)	(Title)
(Date)	(Date)

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

ADDENDUM "A"

DESCRIPTION OF LEASED AREA AND LEASE ACTIVITIES

Lease Number _____

I. Lessor and Lessee Contact Information

Lessee Company Number: _____

(a) Lessor's Contact Information

	Lease Representative	**Operations Representative**
Name		
Title		
Address		
Phone		
Fax		
Email		

(b) Lessee's Contact Information

	Lease Representative	**Operations Representative**
Name		
Title		
Address		
Phone		
Fax		
Email		

II. Description of Leased Area

The total acreage of the project area is _____.

The following blocks or portions of blocks lying within Official Protraction Diagram _____, depicted on the map attached and comprising _____ acres, more or less.

For the purposes of these calculations, the acreage of a full block is _____.

III. Renewable Energy Resource

IV. Description of the Project

V. Description of Project Easement

Once approved, Lessor will incorporate your project easement in your lease as Addendum "D".

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

ADDENDUM "B"

LEASE TERM AND FINANCIAL SCHEDULE

Lease Number _____

I. Lease Term

The duration of each term of the lease is described below. The terms may be extended or otherwise modified in accordance with applicable regulations in 30 C.F.R. Part 285.

Lease Term:	**Duration:**
Preliminary Term	
Site Assessment Term	
Operations Term	

Renewal: Lessee may request renewal of the operations term of this lease, in accordance with applicable regulations in 30 C.F.R. Part 285. Lessor, at its discretion, may approve a renewal request to conduct substantially the same activities as were originally authorized under this lease or in an approved plan. Lessor will not approve a renewal request that involves development of a type of renewable energy not originally authorized in the lease. Lessor may revise or adjust payment terms of the original lease, as a condition of lease renewal.

Unless otherwise described below, the Preliminary Term begins on the Effective Date of this lease for leases issued competitively. Unless otherwise described below, for noncompetitively issued leases, the Site Assessment Term begins on the Effective Date of this lease. The Operations Term begins on the date that the Lessor approves Lessee's COP.

II. Definitions

III. Payments

(a) ***Rent.*** The Lessee must pay rent as described below:

- Acres in Project Area: _____
- Annual Rental Rate: $_____ per acre or fraction thereof
- Rental Fee for entire project area: $_____ x _____ (rounded) = $_____

(1) ***Project Easement.***

Rent for any project easement(s) is described in Addendum "D".

(2) ***Relinquishment.***

If Lessee submits an application for relinquishment of a portion of the leased area within the first 45 days following the Lease Issuance Date, and the Lessor approves that application, no rent payment will be due on that relinquished portion of the leased area. Later relinquishments of any leased area will reduce the Lessee's rent payments due in the year following the Lessor's approval of the relinquishment.

(b) ***Operating Fee.*** The Lessee must pay an operating fee as described below:

(1) **Initial Operating Fee Payment.**

(2) **Annual Operating Fee Payment.**

(3) **Final Operating Fee Payment.**

(4) **The formula for calculating the operating fee in year *t*.**

F_t	=	M_t	*	H	*	c_p	*	P_t	*	r_t
(annual operating fee)		(nameplate capacity)		(hours per year)		(capacity factor)		(power price)		(operating fee rate)

(c) ***Reporting, Validation, Audits, and Late Payments.***

IV. Financial Assurance

The BOEMRE will base the determination for the amounts of all SAP, COP and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations. The BOEMRE determines the amount of supplemental and decommissioning financial assurance requirements on a case-by-case basis. The amount of the financial assurance must be no less than the amount required to meet all lease obligations, including:

- The projected amount of rent and other payments due the Government over the next 12 months;
- Any past due rent and other payments;
- Other monetary obligations; and
- The estimated cost of facility decommissioning.

(a) **Initial Financial Assurance Due Before Lease Issuance Date.**

(b) **Additional Financial Assurance.**

(C) **Adjustments to Financial Assurance Amounts.** The Lessor reserves the right to adjust the amount of any financial assurance requirement (initial, supplemental or decommissioning) associated with this lease and/or reassess Lessee's cumulative lease obligations, including decommissioning obligations, at any time.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

ADDENDUM "C"[1]

LEASE-SPECIFIC TERMS, CONDITIONS, AND STIPULATIONS

Lease Number _____

The Lessee's rights to conduct activities on the leased area are subject to the following terms, conditions, and stipulations:

[1] Note: Stipulations are developed on a case-by-case basis relating to location, technology utilized, and other relevant factors, including site-specific findings from project-specific environmental analyses.

ENVIRONMENTAL STIPULATIONS

The mitigation, monitoring, and reporting requirements listed in this section are adopted as terms and conditions of the lease. Monitoring results and required reports must be submitted to the Lessor as specified below:

Bureau of Ocean Energy Management, Regulation and Enforcement
Office of Offshore Alternative Energy Programs
381 Elden Street, MS 4090
Herndon, VA 20170
Phone: 703-787-1300
Fax: 703-787-1708

Lessor may change this address upon notice to the Lessee in accordance with Section 16 of this lease.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

ADDENDUM "D"

PROJECT EASEMENT

Lease Number _____

This section includes a description of the Project Easement(s), if any, associated with this lease, and the financial terms associated with it. This section will be updated as necessary.

[FR Doc. 2011–22608 Filed 9–2–11; 8:45 am]
BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO2600000 L10600000 XQ0000]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet on Thursday, October 13, 2011, from 8 a.m. until 5 p.m. and on Friday, October 14, 2011, from 8 a.m. until 12 p.m., local time. This will be a two-day meeting.

ADDRESSES: This Advisory Board meeting will take place in Arlington, Virginia at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202. The hotel phone number for reservations is 703–418–1234 and the fax number is 703–418–1233.

Written comments pertaining to the October 13–14, 2011, Advisory Board meeting can be mailed to National Wild Horse and Burro Program,WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147, or sent electronically to the BLM through the Wild Horse and Burro Web site at: *http://www.blm.gov/wo/st/en/prog/whbprogram/recent_news_and_information/enhanced_feedback_form.html.* All comments should be submitted no later than close of business on October 5, 2011.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The Wild Horse and Burro Advisory Board operates under the authority of 43 CFR part 1784. The tentative agenda for the two-day event is:

I. Advisory Board Public Meeting

Thursday, October 13, 2011 (8 p.m.–5 p.m.)

8 a.m. Call to Order and Introductions
8:30 a.m. Old Business
  Approval of March 2011 Minutes
9 a.m. Program Updates
  Gathers
  Adoptions
  Budget
  Facilities
Lunch (11:45 p.m.–1 p.m.)
1 p.m. New Business
3 p.m. Public Comments
5 p.m. Adjourn

Friday, October 14, 2011 (8 a.m.–12 p.m.)

8 a.m. New Business (continued)
10 a.m. Board Recommendations
11:30 a.m. Recap/Summary/Next Meeting/Date/Site
12 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. DeLorme two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations at 41 CFR 101–6.1015(b), require BLM to publish in the **Federal Register** notice of a public meeting 15 days prior to the meeting date.

II. Public Comment Procedures

On Thursday, October 13, 2011, members of the public will have the opportunity to make comments to the Board on the Wild Horse and Burro Program. Persons wishing to make comments during the Thursday meeting should register with the BLM by 1 p.m. on October 13, 2011, in person, at the meeting location. Depending on the number of comments, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to three minutes in length; however, this time may vary. Commenters should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section above or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments. The BLM considers comments that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations to be the most useful and likely to influence BLM's decisions on the management and protection of wild horses and burros. The BLM will not necessarily consider comments received after the close of business on October 13, 2011.

Before including your address, phone number, e-mail 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: August 29, 2011.

Edwin L. Roberson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 2011–22626 Filed 9–2–11; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2031–A053–409]

Draft Environmental Impact Statement for General Management Plan, Gulf Islands National Seashore, Florida and Mississippi

AGENCY: National Park Service, Interior

ACTION: Notice of Availability of the Draft General Management Plan and Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Draft Environmental Impact Statement (DEIS) for the General

Management Plan (GMP) for Gulf Islands National Seashore (seashore).

Consistent with NPS laws, regulations, and policies and the purpose of the seashore, the DEIS/GMP describes the NPS preferred alternative—Alternative 3—to guide the management of the seashore over the next 15 to 20 years. The preferred alternative incorporates various management prescriptions to ensure protection, access and enjoyment of the seashore's resources.

An up-to-date GMP is needed to address how visitors access and use the seashore and the facilities needed to support those uses, how resources are managed, and how the NPS manages its operations. Recent studies have enhanced the NPS's understanding of resources, resource threats, and visitor use in the seashore.

DATES: The NPS will accept comments from the public on the DEIS/GMP for at least 60 days, starting from the date the Environmental Protection Agency publishes the Notice of Availability and ending 3 to 4 weeks after public meetings conclude. The date, time, and location of the public meetings will be announced through the NPS Planning, Environment, and Public Comment (PEPC) Web site: *http://parkplanning.nps.gov/GUIS* and media outlets.

ADDRESSES: Electronic copies of the draft DEIS/GMP will be available online at *http://parkplanning.nps.gov/GUIS.* To request a copy, contact Gulf Islands National Seashore Superintendent Daniel R. Brown, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563.

Comments may be submitted by several methods. The preferred method is commenting via the internet on the PEPC Web site above. An electronic public comment form is provided on this website. You may also mail comments to Superintendent, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563. Finally, you may hand-deliver comments to the seashore. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety. A limited number of compact disks and printed copies of the DEIS/GMP will be made available at Gulf Islands National Seashore headquarters, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563.

SUPPLEMENTARY INFORMATION: Public meetings, newsletters, and internet updates have kept the public informed and involved throughout the planning process. The DEIS/GMP provides a framework for management, use, and development of the seashore for the next 15 to 20 years. It presents and analyzes four alternatives: Alternative 1 (no action) provides a baseline for evaluating changes and impacts of the four action alternatives. Alternative 2 would reduce the level of infrastructure rebuilt on the barrier islands and allow natural processes to predominate. Alternative 3 is the NPS Preferred Alternative. The concept for management under alternative 3 is to enhance visitor education, research, and resource protection opportunities. The seashore would be managed as an outdoor classroom for exploring the natural and human history of the Gulf of Mexico's barrier islands and coastal environments. Interpretive programs would focus on illustrating how barrier islands act as protectors of the mainland coastline, and the part these islands have played in the last 5,000 years of historic human occupation. Alternative 4 would expand and diversify visitor opportunities throughout the seashore by leveraging additional partnerships. The four alternatives are described in detail in chapter 2 of the draft plan. The key impacts of implementing the four alternatives are detailed in chapter 4 and summarized in chapter 2.

Authority: The authority for publishing this notice is contained in 40 CFR 1506.6.

FOR FURTHER INFORMATION CONTACT: Superintendent Daniel R. Brown, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563 or telephone at (850) 934–2600.

The responsible official for this Draft EIS is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: August 24, 2011.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2011–22589 Filed 9–2–11; 8:45 am]

BILLING CODE 4310–X8–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Devices for Mobile Data Communication,* DN 2843; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Openwave Systems Inc. on August 31, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for mobile data communication. The complaint names as respondents Apple Inc. of CA; Research In Motion Ltd. of Canada; and Research in Motion Corp. of TX.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a

cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2843'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing. pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: August 31, 2011.

James Holbein,

Secretary to the Commission.

[FR Doc. 2011–22673 Filed 9–2–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–718 (Third Review)]

Glycine From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on October 7, 2010 (75 FR 62141) and determined on January 4, 2011 that it would conduct a full review (76 FR 8771, February 15, 2011). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 15, 2011 (76 FR 8771). The hearing was held in Washington, DC, on June 30, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on August 30, 2011. The views of the Commission are contained in USITC Publication 4255 (August 2011), entitled *Glycine from China: Investigation No. 731–TA–718 (Third Review).*

By order of the Commission.

Issued: August 30, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–22638 Filed 9–2–11; 8:45 am]

BILLING CODE

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–698; (Enforcement Proceeding)]

In the Matter of Certain DC–DC Controllers and Products Containing Same; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the August 13, 2010, consent orders issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3061. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the original investigation on December 29, 2009, based on a complaint filed by Richtek Technology Corp. of Taiwan and Richtek USA, Inc. of San Jose, California (collectively ''Richtek''). 75 FR 446–47. The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United

States, the sale for importation, and the sale within the United States after importation of certain DC–DC controllers and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,315,190; 6,414,470; and 7,132,717; and by reason of trade secret misappropriation. The Commission's notice of investigation named the following respondents: VisionTek Products LLC (''VisionTek'') of Inverness, Illinois; uPI Semiconductor Corp. (''uPI'') of Taiwan; Sapphire Technology Limited (''Sapphire'') of Hong Kong; Advanced Micro Devices, Inc. of Sunnyvale, California; Best Data Products d/b/a Diamond Multimedia of Chatsworth, California; Eastcom, Inc. d/b/a XFX Technology USA of Rowland Heights, California; Micro-Star International Co., Ltd. of Taiwan; and MSI Computer Corp. of City of Industry, California.

On August 13, 2010, the Commission issued notice of its determination not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') granting uPI's and Sapphire's joint motion to terminate the investigation as to themselves based on consent orders. The consent orders prohibit the importing, offering for sale, and selling for importation DC–DC controllers, or products containing the same, into the United States that infringe the asserted patents or that contain or use the asserted trade secrets. Subsequently, on October 21, 2010, the Commission issued notice of its determination not to review the ALJ's ID granting a joint motion to terminate the investigation as to VisionTek based on a settlement agreement and terminating the investigation in its entirety because VisionTek was the sole respondent remaining in the investigation, the others having been terminated based on settlement agreements or consent orders during the investigation.

On July 21, 2011, Richtek filed a complaint for enforcement proceedings under Commission Rule 210.75. Richtek asserts that uPI and Sapphire have violated the August 13, 2010 consent orders by the continued practice of prohibited activities such as importing, offering for sale, and selling for importation into the United States DC–DC controllers or products containing the same that infringe the asserted patents or that contain or use the asserted trade secrets.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether uPI and/or Sapphire are in violation of the August 13, 2010 consent orders issued in the investigation, and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Richtek, (2) respondents uPI and Sapphire, and (3) the Office of Unfair Import Investigations.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

By order of the Commission.

Issued: August 30, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–22640 Filed 9–2–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–766]

In the Matter of Certain Gemcitabine and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 15) granting a motion to terminate the above-captioned investigation in its entirety, pursuant to Commission Rule 210.21 (19 CFR 210.21).

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 23, 2011, based on a complaint filed by Eli Lilly and Company (''Lilly''). 76 FR 16445. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gemcitabine and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,606,048. The complaint named Hospira, Inc. (''Hospira''); Intas Pharmaceuticals Ltd. (''Intas''); ChemWerth, Inc. (''ChemWerth''); and Jiangsu Hansoh Pharmaceutical Co., Ltd. (''Hansoh'') as respondents.

On August 9, 2011, Lilly, Hospira, and Intas filed a joint motion to terminate the investigation in its entirety under Commission Rule 210.21. On August 11, 2011, the Commission investigative attorney filed a response supporting the motion. On August 15, 2011, respondents ChemWerth and Hansoh filed a response supporting termination, but for different reasons than those advanced by Lilly, Hospira, and Intas.

On August 16, 2011, the ALJ issued the subject ID (Order No. 15) granting the motion to terminate the investigation in its entirety. No party petitioned for review of the ID.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h)(3) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)(3)).

By order of the Commission.

Issued: August 31, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–22668 Filed 9–2–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. General Electric Co., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *General Electric Co., et al.,* Civil Action No. 1:11–cv–01549. On August 29, 2011, the United States filed a Complaint alleging that the proposed acquisition by General Electric Company (''GE'') of CVT Holding SAS, Financière CVT SAS, and Converteam Group SAS would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires GE to divest the Converteam Electric Machinery Business, which produces low-speed synchronous electric motors used in reciprocating compressors in the oil and gas industry, and includes its production facility located in Minneapolis, Minnesota, as well as certain tangible and intangible assets associated with the business.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *General Electric Company, 3135 Easton Turnpike, Fairfield, CT 06828,* and *CVT Holding SAS, 30 avenue Carnot, 91345 Massy Cedex, France, Financière CVT SAS, 30 avenue Carnot, 91345 Massy Cedex, France, Converteam Group SAS, 30 avenue Carnot, 91345 Massy Cedex, France,* Defendants.

Case: 1:11–cv–01549.
Assigned To: Boasberg, James E.
Assign. Date: 8/29/2011.
Description: Antitrust.

Complaint

Plaintiff, the United States of America (''United States''), acting under the direction of the Attorney General of the United States brings this civil antitrust action to enjoin the proposed acquisition of CVT Holding SAS, Financière CVT SAS, and Converteam Group SAS (collectively, ''Converteam'') by General Electric Company (''GE'') and to obtain other equitable relief. The United States alleges as follows:

I. Nature of the Action

1. Pursuant to a share purchase agreement dated March 28, 2011, GE intends to acquire control of Converteam Group SAS by purchasing approximately 90 percent of the shares of CVT Holding SAS and 100 percent of the shares of Financière CVT SAS for approximately $3.2 billion.

2. GE and Converteam are two of the three leading North American suppliers of low-speed synchronous electric motors used in reciprocating compressors in the oil and gas industry (hereafter ''LSSMs'').

3. The proposed acquisition would eliminate competition between GE and Converteam for these motors. For a significant number of customers, GE and Converteam are the two best sources of LSSMs. Elimination of competition between GE and Converteam likely would give GE the ability to raise prices or decrease the quality of service provided to these customers. As a result, the proposed acquisition likely would substantially lessen competition in the development, manufacture, and sale of LSSMs in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

4. Defendant General Electric Company is a New York corporation with its principal offices in Fairfield, Connecticut. GE is a global manufacturing, technology and services company. GE's subsidiary, GE Energy, provides power generation and energy delivery technologies in a number of areas in the energy industry, including coal, oil, natural gas, and nuclear energy, as well as in renewable resources such as water, wind, solar and alternative fuels. GE Energy also manufactures a full range of electric motors, including LSSMs. GE's facility in Peterborough, Canada manufactures LSSMs sold in North America. In 2010, GE's worldwide revenues were $150 billion and revenues from its Peterborough large motor and generator facility were $139.1 million.

5. Defendant Converteam Group SAS, headquartered in Massy Cedex, France, is a wholly and directly owned subsidiary of Financière CVT SAS, a French corporation, which is itself owned by CVT Holding SAS, a French corporation. CVT Holding SAS's equity is held by Barclays Private Equity France, LBO France, and Converteam Group SAS management. Converteam is a power conversion engineering company focusing on motors, generators, drives, converters and automation controls. Converteam manufactures and assembles medium-voltage large electric motors in facilities located in France, the United Kingdom, and the United States. Converteam's indirectly held United States subsidiary, Electric Machinery Holding Company, manufactures LSSMs in Minneapolis, Minnesota. In 2010, Converteam's worldwide revenues were $1.5 billion and revenues from its Minneapolis facility were $47.7 million.

III. Jurisdiction, Venue, and Interstate Commerce

6. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

7. Defendants GE and Converteam develop, manufacture and sell LSSMs in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of LSSMs substantially affect interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. § 1331, 1337(a), and 1345.

8. Defendants have consented to venue and personal jurisdiction in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391 (c). Venue is also proper in the District of Columbia for defendant Converteam under 28 U.S.C. 1391(d).

IV. Trade and Commerce

A. Industry Background

9. Oil and gas refineries and certain other petrochemical operations utilize reciprocating compressors for processes requiring high-pressure delivery of gases. A reciprocating compressor uses mechanical drivers (motors) to turn its crankshafts and move its pistons, thereby compressing low-pressure gas and making it higher-pressure. Compressor drivers fall into three categories—electric, steam, and gas. The production facility requiring a reciprocating compressor will choose the type of driver based on the facility's available energy or waste supply.

10. Due to the availability of a steady supply of electricity, North American oil refineries generally require an electric driver—a large electric motor—for their reciprocating compressors. Large electric motors consist of a stator and a rotor, with the speed (rotation per minute) of the motor dependent upon the number of rotor poles. Motors that contain more poles operate at slower speeds.

11. Electric motors are either synchronous or induction (also known as asynchronous). Induction motors are easier to manufacture and cheaper to purchase and maintain than synchronous motors. Synchronous motors are more expensive and involve a sophisticated engineering process. They are used in applications that require precise speed regulation; the motor rotates at a speed proportional to and accurately synchronized with the frequency of the power supply. An induction motor may run slightly slower or faster than the power supply frequency, and will slip as the load increases. Synchronous motors are more efficient than induction motors, will operate at a fixed speed, without any slippage, and provide higher performance at higher power ratings.

12. In processing and refining crude oil into petroleum products, oil refineries use low-speed reciprocating compressors for hydrogen compression to support different refinery operations. For optimal performance and reliability, this application requires a LSSM to drive the compressor. Each LSSM is custom-designed to meet technical performance requirements related to specific facility characteristics. These LSSMs generally operate between 277 to 400 revolutions per minute, meaning they have between 18 to 26 poles, are typically operating at medium voltage, and generate horsepower in the range of 1,500 to 15,000.

13. LSSMs are sold pursuant to bids, which are based on technical specifications from the customer. Suppliers of LSSMs use patented or proprietary technology and know-how—including expertise gained through years or decades of trial and error and expertise with prior installations—to custom design LSSMs that satisfy the customers' technical specifications. LSSMs for use in North America must meet specific National Electrical Manufacturers Association (''NEMA'') regulatory standards, as opposed to the International Electrotechnical Commission (''IEC'') standards applicable to the rest of the world.

14. Customers (in conjunction with the engineering firms that consult for them) evaluate competing bids based on their compliance with technical specifications and on commercial considerations such as price, delivery schedule, and terms of sale. The combined technical and commercial needs of the customer differ for each LSSM project.

15. LSSMs have a useful life ranging from 30 to 40 years. New construction of refineries is uncommon in North America. Purchases of new LSSMs in North America are therefore infrequent; customers typically purchase new reciprocating compressors only when a refinery is expanded or overhauled.

B. Relevant Market

1. Product Market

16. Oil refineries rely on heavy equipment that consumes large amounts of electricity twenty-four hours per day. To operate effectively, refineries generally are connected directly to the electricity grid, in lieu of receiving power through distribution lines, which are less efficient. This direct connection to the grid means that equipment in the refinery usually operates at a much higher power level than equipment not so connected. In order to minimize energy costs, refineries require a LSSM, which uses electrical energy more efficiently than other types of motors. Use of a LSSM guarantees that the motor always will operate at precisely the power factor of the refinery and that the refinery's reciprocating compressor will be driven at a fixed speed, reducing energy losses. By comparison, an induction motor would require significantly larger amounts of electricity to perform the same amount of work.

17. A small but significant increase in the price of LSSMs would not cause a sufficient number of customers to substitute another type of motor or to a motor built to IEC standards so as to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of LSSMs is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Geographic Market

18. GE and Converteam compete on bids to customers for LSSMs in North America. GE manufactures LSSMs at facilities in Peterborough, Ontario, Canada for sale in North America. Converteam manufactures LSSMs in Minneapolis, Minnesota for sale in North America. Virtually all LSSMs purchased by oil and gas customers in North America are manufactured in facilities located in North America.

19. Those competitors that could constrain GE from raising prices to customers on bids for LSSMs in North America typically are suppliers with a physical presence in North America, including manufacturing, sales, technical and support personnel, and parts distribution. These competitors are most familiar with NEMA regulatory standards.

20. Refineries prefer such suppliers because, during the bid, design, assembly, and installation phases of a LSSM project, customers interact with suppliers to address design recommendations and changes, track assembly progress, and ensure successful installation. Further, customers purchasing LSSMs can avoid costly delays or down time in refinery operations by selecting a LSSM supplier that is able to respond quickly to requests for service or replacement parts during the operating life of the LSSM.

21. A small but significant increase in the price of LSSMs would not cause a significant number of customers in North America to turn to manufacturers of LSSMs that do not conform to North American standards so as to make such a price increase unprofitable. Accordingly, sales to customers in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effect of the Acquisition

22. GE's acquisition of Converteam likely would substantially lessen competition in the North American LSSM market. GE and Converteam have consistently bid against each other on

nearly all LSSM projects since 2007. The competition between GE and Converteam in the development, production, and sale of LSSMs has benefited customers. GE and Converteam compete directly on price, terms of sale, and service. For many oil refineries, Converteam is the preferred alternative to GE. The proposed acquisition would eliminate GE's most significant competitor in the sale of LSSMs to customers in North America.

23. Only three competitors, including GE and Converteam, have sold LSSMs in North America since 2007. The third company often does not submit bids on North American LSSM projects, and has failed to achieve a significant share of the market. The fact that the third company rarely wins against GE and Converteam suggests that customers find GE and Converteam's products more attractive relative to the third provider.

24. GE's acquisition of Converteam would eliminate many customers' preferred alternative to GE and reduce from three to two—or for some bids, reduce from two to one—the number of bidders. Post-acquisition, GE would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels.

25. The response of the remaining LSSM manufacturer would not be sufficient to constrain a unilateral exercise of market power by GE after the acquisition. GE would be aware that many customers strongly prefer it as a supplier, allowing it to raise prices above pre-acquisition levels. No longer constrained by Converteam's price, post-acquisition, GE would raise its prices to the monopoly level for customers that require either GE or Converteam. For customers that can consider an option other than the parties, prices would rise to the level of the third bidder. Thus, the acquisition of Converteam by GE creates an incentive for GE to bid a higher amount than it would if Converteam were still a competitor. Elimination of Converteam as a competitor also would reduce the remaining bidders' incentives to offer quick delivery or other terms of sale favorable to customers and to invest in service, quality and technology improvements.

26. Therefore, the acquisition would substantially lessen competition in the development, manufacture, and sale of LSSMs to customers in North America and lead to higher prices, less favorable terms of sale, and decreased quality of service in the LSSM market, in violation of Section 7 of the Clayton Act.

D. Entry into the Low Speed Synchronous Electric Motor Market

27. Substantial, timely entry of additional competitors is unlikely and, therefore, will not prevent the harm to competition caused by the elimination of Converteam as a bidder.

28. A small number of companies have sold LSSMs outside North America, but these companies have no relevant, substantial North American presence. Given the small size of the North American LSSM market, they are unlikely to invest in the capital infrastructure required to compete effectively in North America.

29. Firms attempting to enter the development, manufacture, and sale of LSSMs to customers in North America face barriers to entry. Establishing a reputation for successful performance and gaining customer confidence in a specific firm's LSSM are significant barriers to entry. North American customers require equipment built to NEMA standards. Many suppliers that operate globally do not have familiarity with these standards. North American oil and gas refineries are reluctant to purchase a LSSM from a supplier that does not have a reputation and track record of successful performance on reciprocating compressors operating in North America. Establishing a reputation for successful performance and/or gaining customer confidence can take years and the expenditure of substantial sunk costs.

30. Financial scale is an additional barrier to entry. Customers prefer suppliers able to stand financially behind the LSSM order, to respond quickly and effectively to a request for service or parts, and to meet warranty obligations years after the initial sale. A supplier of LSSMs therefore must be able to prove that it is financially sound.

31. For these reasons, entry or expansion by other firms into the North American market for the development, manufacture, and sale of LSSMs would not be timely, likely or sufficient to defeat the substantial lessening of competition that likely would result if GE acquires Converteam.

V. Violation Alleged

32. The acquisition of Converteam by GE would substantially lessen competition in the market for the development, manufacture, and sale of LSSMs to customers in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

33. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. actual and potential competition between GE and Converteam in the market for the development, manufacture, and sale of LSSMs to customers in North American will be eliminated;

b. competition generally in the market for the development, manufacture, and sale of LSSMs to customers in North America will be substantially lessened; and

c. prices for LSSMs in North America likely will increase, the terms of sale to customers in North America likely will be less favorable, and quality of service relating to LSSMs in North America likely will decline.

VI. Requested Relief

34. Plaintiff requests that this Court:

a. Adjudge and decree GE's proposed acquisition of Converteam to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Preliminarily and permanently enjoin and restrain defendants and all persons acting on their behalf from consummating the proposed acquisition of Converteam by GE or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Converteam with the operations of GE;

c. Award the United States its costs for this action; and

d. Award the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

For Plaintiff United States of America

/s/ _____

Sharis A. Pozen,

Acting Assistant Attorney General.

/s/ _____

Patricia A. Brink,

Director of Civil Enforcement.

/s/ _____

Maribeth Petrizzi

Chief, Litigation II Section, D.C. Bar #435204.

/s/ _____

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/s/ _____

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Dated: August 29, 2011

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *General Electric Company, and CVT Holding SAS, Financière CVT SAS, and Converteam Group SAS,* Defendants.

Case: 1:11–cv–01549.

Assigned To: Boasberg, James E.
Assign. Date: 8/29/2011.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Pursuant to a share purchase agreement dated March 28, 2011, defendant General Electric Company (''GE'') intends to acquire control of defendant Converteam Group SAS by purchasing approximately 90 percent of the shares of CVT Holding SAS and all of the shares of Financière CVT SAS (collectively ''Converteam'') for approximately $3.2 billion.

The United States filed a civil antitrust Complaint on August 29, 2011, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in North America for the development, manufacture, and sale of low-speed synchronous electric motors used in reciprocating compressors in the oil and gas industry (hereafter ''LSSMs''). That loss of competition likely would result in higher prices and decreased quality of service in the North American market for LSSMs.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of GE's acquisition of Converteam. Under the proposed Final Judgment, which is explained more fully below, the defendants are required to divest the Converteam Electric Machinery Holding Company (''Electric Machinery'') business, which includes its Minneapolis, Minnesota manufacturing facility that produces all of its LSSMs, all of the tangible assets necessary to operate the facility, and all of the intangible assets (*i.e.,* intellectual property and know-how) related to the facility. Under the terms of the Hold Separate Stipulation and Order, defendants will take certain steps to ensure that the Converteam Electric Machinery business is operated as a competitively independent, economically viable and ongoing business concern; that it will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants

Defendant General Electric Company is a New York corporation with its principal offices in Fairfield, Connecticut. GE is a global manufacturing, technology and services company. GE's subsidiary, GE Energy, provides power generation and energy delivery technologies in a number of areas in the energy industry, including coal, oil, natural gas, and nuclear energy, as well as in renewable resources such as water, wind, solar and alternative fuels. GE Energy also manufactures a full range of electric motors, including LSSMs. GE's facility in Peterborough, Canada manufactures LSSMs sold in North America. In 2010, GE's worldwide revenues were $150 billion and revenues from its Peterborough large motor and generator facility were $139.1 million.

Defendant Converteam Group SAS, headquarted in Massy Cedex, France, is a wholly and directly owned subsidiary of Financière CVT SAS, a French corporation, which is itself owned by CVT Holding SAS, a French corporation. CVT Holding SAS's equity is held by Barclays Private Equity France, LBO France, and Converteam Group SAS management. Converteam is a power conversion engineering company focusing on motors, generators, drives, converters and automation controls. Converteam manufactures and assembles medium-voltage large electric motors in facilities located in France, the United Kingdom, and the United States. Converteam's indirectly held United States subsidiary, Electric Machinery Holding Company, manufactures LSSMs in Minneapolis, Minnesota. In 2010, Converteam's worldwide revenues were $1.5 billion and revenues from its Minneapolis facility were $47.7 million.

B. Anticompetitive Effects in the North American Market for Low-Speed Synchronous Electric Motors for Reciprocating Compressors

(1) Electric Motors in the Oil and Gas Industry

Oil and gas refineries and certain other petrochemical operations utilize reciprocating compressors for processes requiring high-pressure delivery of gases. A reciprocating compressor uses mechanical drivers (motors) to turn its crankshafts and move its pistons, thereby compressing low-pressure gas and making it higher-pressure. Compressor drivers fall into three categories—electric, steam, and gas. The production facility requiring a reciprocating compressor will choose the type of driver based on the facility's available energy or waste supply.

Due to the availability of a steady supply of electricity, North American oil refineries generally require an electric driver—a large electric motor—for their reciprocating compressors. Large electric motors consist of a stator and a rotor, with the speed (rotation per minute) of the motor dependent upon the number of rotor poles. Motors that contain more poles operate at slower speeds.

Electric motors are either synchronous or induction (also known as asynchronous). Induction motors are easier to manufacture and cheaper to purchase and maintain than synchronous motors. Synchronous motors are more expensive and involve a sophisticated engineering process. They are used in applications that require precise speed regulation; the motor rotates at a speed proportional to and accurately synchronized with the frequency of the power supply. An induction motor may run slightly slower or faster than the power supply frequency, and will slip as the load increases. Synchronous motors are more efficient than induction motors, will operate at a fixed speed, without any slippage, and provide higher performance at higher power ratings.

In processing and refining crude oil into petroleum products, oil refineries use low-speed reciprocating compressors for hydrogen compression to support different refinery operations. For optimal performance and reliability, this application requires a LSSM to drive the compressor. Each LSSM is custom-designed to meet technical performance requirements related to specific facility characteristics. These LSSMs generally operate between 277 to 400 revolutions per minute, meaning they have between 18 to 26 poles, are typically operating at medium voltage,

and generate horsepower in the range of 1,500 to 15,000.

LSSMs are sold pursuant to bids, which are based on technical specifications from the customer. Suppliers of LSSMs use patented or proprietary technology and know-how—including expertise gained through years or decades of trial and error and expertise with prior installations—to custom design LSSMs that satisfy the customers' technical specifications. LSSMs for use in North America must meet specific National Electrical Manufacturers Association (''NEMA'') regulatory standards, as opposed to the International Electrotechnical Commission (''IEC'') standards applicable to the rest of the world.

Customers (in conjunction with the engineering firms that consult for them) evaluate competing bids based on their compliance with technical specifications and on commercial considerations such as price, delivery schedule, and terms of sale. The combined technical and commercial needs of the customer differ for each LSSM project.

LSSMs have a useful life ranging from 30 to 40 years. New construction of refineries is uncommon in North America. Purchases of new LSSMs in North America are therefore infrequent; customers typically purchase new reciprocating compressors only when a refinery is expanded or overhauled.

(2) The North American Market for Low-Speed Synchronous Motors Used in Reciprocating Compressors in the Oil and Gas Industry

Oil refineries rely on heavy equipment that consumes large amounts of electricity twenty-four hours per day. To operate effectively, refineries generally are connected directly to the electricity grid, in lieu of receiving power through distribution lines, which are less efficient. This direct connection to the grid means that equipment in the refinery usually operates at a much higher power level than equipment not so connected. In order to minimize energy costs, refineries require a LSSM, which uses electrical energy more efficiently than other types of motors. Use of a LSSM guarantees that the motor always will operate at precisely the power factor of the refinery and that the refinery's reciprocating compressor will be driven at a fixed speed, reducing energy losses. By comparison, an induction motor would require significantly larger amounts of electricity to perform the same amount of work.

A small but significant increase in the price of LSSMs would not cause a sufficient number of customers to substitute another type of motor or to a motor built to IEC standards so as to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of LSSMs is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

GE and Converteam compete on bids to customers for LSSMs in North America. GE manufactures LSSMs at facilities in Peterborough, Ontario, Canada for sale in North America. Converteam manufactures LSSMs in Minneapolis, Minnesota for sale in North America. Virtually all LSSMs purchased by oil and gas customers in North America are manufactured in facilities located in North America.

Those competitors that could constrain GE from raising prices to customers on bids for LSSMs in North America typically are suppliers with a physical presence in North America, including manufacturing, sales, technical and support personnel, and parts distribution. These competitors are most familiar with NEMA regulatory standards.

Refineries prefer such suppliers because, during the bid, design, assembly, and installation phases of a LSSM project, customers interact with suppliers to address design recommendations and changes, track assembly progress, and ensure successful installation. Further, customers purchasing LSSMs can avoid costly delays or down time in refinery operations by selecting a LSSM supplier that is able to respond quickly to requests for service or replacement parts during the operating life of the LSSM.

A small but significant increase in the price of LSSMs would not cause a significant number of customers in North America to turn to manufacturers of LSSMs that do not conform to North American standards so as to make such a price increase unprofitable. Accordingly, sales to customers in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

(3) Anticompetitive Effects

GE's acquisition of Converteam likely would substantially lessen competition in the North American LSSM market. GE and Converteam have consistently bid against each other on nearly all LSSM projects since 2007. The competition between GE and Converteam in the development, production, and sale of LSSMs has benefited customers. GE and Converteam compete directly on price, terms of sale, and service. For many oil refineries, Converteam is the preferred alternative to GE. The proposed acquisition would eliminate GE's most significant competitor in the sale of LSSMs to customers in North America.

Only three competitors, including GE and Converteam, have sold LSSMs in North America since 2007. The third company often does not submit bids on North American LSSM projects, and has failed to achieve a significant share of the market. The fact that the third company rarely wins against GE and Converteam suggests that customers find GE and Converteam's products more attractive relative to the third provider.

GE's acquisition of Converteam would eliminate many customers' preferred alternative to GE and reduce from three to two—or for some bids, reduce from two to one—the number of bidders. Post-acquisition, GE would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels.

The response of the remaining LSSM manufacturer would not be sufficient to constrain a unilateral exercise of market power by GE after the acquisition. GE would be aware that many customers strongly prefer it as a supplier, allowing it to raise prices above pre-acquisition levels. No longer constrained by Converteam's price, post-acquisition, GE would raise its prices to the monopoly level for customers that require either GE or Converteam. For customers that can consider an option other than the parties, prices would rise to the level of the third bidder. Thus, the acquisition of Converteam by GE creates an incentive for GE to bid a higher amount than it would if Converteam were still a competitor. Elimination of Converteam as a competitor also would reduce the remaining bidders' incentives to offer quick delivery or other terms of sale favorable to customers and to invest in service, quality and technology improvements.

Therefore, the acquisition would substantially lessen competition in the development, manufacture, and sale of LSSMs to customers in North America and lead to higher prices, less favorable terms of sale, and decreased quality of service in the LSSM market, in violation of Section 7 of the Clayton Act.

(4) Entry

Substantial, timely entry of additional competitors is unlikely and, therefore, will not prevent the harm to competition caused by the elimination of Converteam as a bidder.

A small number of companies have sold LSSMs outside North America, but these companies have no relevant,

substantial North American presence. Given the small size of the North American LSSM market, they are unlikely to invest in the capital infrastructure required to compete effectively in North America.

Firms attempting to enter the development, manufacture, and sale of LSSMs to customers in North America face barriers to entry. Establishing a reputation for successful performance and gaining customer confidence in a specific firm's LSSM are significant barriers to entry. North American customers require equipment built to NEMA standards. Many suppliers that operate globally do not have familiarity with these standards. North American oil and gas refineries are reluctant to purchase a LSSM from a supplier that does not have a reputation and track record of successful performance on reciprocating compressors operating in North America. Establishing a reputation for successful performance and/or gaining customer confidence can take years and the expenditure of substantial sunk costs.

Financial scale is an additional barrier to entry. Customers prefer suppliers able to stand financially behind the LSSM order, to respond quickly and effectively to a request for service or parts, and to meet warranty obligations years after the initial sale. A supplier of LSSMs therefore must be able to prove that it is financially sound.

For these reasons, entry or expansion by other firms into the North American market for the development, manufacture, and sale of LSSMs would not be timely, likely or sufficient to defeat the substantial lessening of competition that likely would result if GE acquires Converteam.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the North American market for LSSMs by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires defendants, within sixty (60) days after the filing of the complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Converteam Electric Machinery Business, which includes the one plant currently producing LSSMs, as well as all of the tangible and intangible assets associated with the business. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the Converteam Electric Machinery Business can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market.

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that GE will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the North American market for LSSMs. To that end, the Divestiture Assets include the entire Converteam Electric Machinery Business, including its production facility located at *800 Central Avenue, Minneapolis, Minnesota 55413 (''Minneapolis Facility''). This facility produces Converteam LSSMs sold to customers in North America. In addition, the facility* has an established record as a high-quality, efficient production facility with product offerings that have been qualified by its customers and sufficient capacity to meet current and future demand for its products.

The Converteam Electric Machinery Business produces other products at its Minneapolis Facility, including other types of synchronous motors, induction motors, brushless exciters, turbo generators, and synchronous generators; it also provides services and parts associated with these products. Although these products are not areas of concern, their divestiture was necessary to create a viable competitor, and their inclusion as Divestiture Assets will ensure that the Converteam Electric Machinery Business will remain a profitable, stand-alone entity with a broad range of products and services.

The proposed Final Judgment also requires divestiture of tangible and intangible assets associated with the Converteam Electric Machinery Business. These assets will provide the acquirer with the physical tools (*e.g.,* equipment, inventory, business records, and the like), and the bank of knowledge and rights (*e.g.,* manufacturing know-how, contractual rights, and the like) needed to create an independent producer of LSSMs equivalent to Converteam's current operations. The Divestiture Assets also include all intangible assets owned, controlled, or maintained by the Converteam Electric Machinery Business used in the design, development, production, marketing, servicing, distribution or sale of any product produced by the Converteam Electric Machinery Business. In addition, the Divestiture Assets include a non-exclusive, non-transferable license for any intangible assets not owned, controlled, or maintained by the Converteam Electric Machinery Business, but that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, or sale of any product produced by the Converteam Electric Machinery Business; this license is transferable to any future purchaser of all or substantially all of the Converteam Electric Machinery Business.

The Converteam Electric Machinery Business, in addition to manufacturing LSSMs, manufactures several other products for which competition will not be reduced by GE's acquisition of Converteam. So that GE can enter these markets and compete, the Final Judgment requires that the acquirer of the Converteam Electric Machinery Business grant to GE a non-exclusive, non-transferable license for any intangible assets that, prior to the filing of the Complaint, were used in the design, development, manufacture, marketing, servicing, or sale of induction motors, brushless exciters, turbo generators, and synchronous generators designed, developed, produced, or sold by the Converteam Electric Machinery Business. This license is transferable to any future purchaser of all or substantially all of the GE business unit using this license, and does not include LSSMs or any other type of synchronous motors.

Lastly, the Final Judgment permits GE to retain Converteam's SAP business management server, which is used by both the Converteam Electric Machinery Business and Converteam's other businesses. To ensure a smooth transition of the Converteam Electric Machinery Business's information to the acquirer, at the option of the acquirer,

and for a period not to exceed one (1) year, the Final Judgment requires that GE grant access and use rights to the SAP business management server and provide transition services and technical assistance to the acquirer of the Converteam Electric Machinery Business. In addition, the Final Judgment requires that GE prevent GE or Converteam employees from accessing Converteam Electric Machinery Business information, except for the purpose of providing transition services or technical assistance to the acquirer. Finally, upon termination of the agreements, GE is required to take all steps necessary to purge information related to the Converteam Electric Machinery Business from the SAP business management server.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects that likely would result if GE acquired Converteam because the acquirer will have the ability to develop, produce, and sell LSSMs to customers in North America in competition with GE.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against GE's acquisition of Converteam. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the development, manufacture and sale of LSSMs in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').

As the United States Court of Appeals for the District of Columbia has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the

first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, the court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case); *United States* v. *Republic Serv., Inc.,* 2010–2 Trade Cas. (CCH) ¶ 77,097, 2010 U.S. Dist. LEXIS 70895, No. 08–2076 (RWR), at *10 (D.D.C. July 15, 2010) (finding that ''[i]n light of the deferential review to which the government's proposed remedy is accorded, [amicus curiae's] argument that an alternative remedy may be comparably superior, even if true, is not a sufficient basis for finding that the proposed final judgment is not in the public interest.'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *Republic Serv.,* 2010 U.S. Dist. LEXIS 70895, at *2–3 (entering final judgment ''[b]ecause there is an adequate factual foundation upon which to conclude that the government's proposed divestitures will remedy the antitrust violations alleged in the complaint.'').

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 29, 2011.

Respectfully submitted,

/s/

Suzanne Morris, *United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (202) 307–1188 suzanne.morris@usdoj.gov.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *General Electric Company, and CVT Holding SAS, Financière CVT SAS, and Converteam Group SAS, Defendants.*

Case no.:

Judge:

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on August 29, 2011, and the United States and defendants, General Electric Company (''GE'') and CVT Holding SAS, Financière CVT SAS, and Converteam

[1] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest''').

[2] The 2004 amendments substituted the word ''shall'' for ''may'' when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Group SAS (''Converteam''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by GE to assure that competition is not substantially lessened;

And whereas, the United States requires GE to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II. Definitions

As used in this Final Judgment:

A. ''GE'' means defendant General Electric Company, a New York corporation with its headquarters in Fairfield, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Converteam'' means defendants CVT Holding SAS, Financière CVT SAS, and French corporations with their headquarters in Massy Cedex, France, and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Converteam Electric Machinery Business'' means Converteam's wholly owned subsidiary Electric Machinery Holding Co., a Delaware corporation with its principal place of business in Minneapolis, Minnesota, and its subsidiaries.

D. ''Acquirer'' means the entity to whom GE shall divest the Divestiture Assets.

E. ''Low Speed Synchronous Motors'' means medium-voltage synchronous electric motors generating horsepower in the range of 1,500 to 15,000 and operating between 277 to 400 revolutions per minute, which are used to drive reciprocating compressors in the oil and gas industry.

F. ''SAP Business Management Server'' means Converteam's SAP business management database, and any related servers and hardware located in Pittsburgh, Pennsylvania, that are used in connection with Converteam's enterprise resource planning system.

G. ''Divestiture Assets'' means the Converteam Electric Machinery Business, including:

(1) The Converteam Electric Machinery Business production facility located at 800 Central Avenue, Minneapolis, Minnesota 55413;

(2) All tangible assets that comprise the Converteam Electric Machinery Business, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Converteam Electric Machinery Business; all licenses, permits and authorizations issued by any governmental organization relating to the Converteam Electric Machinery Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Converteam Electric Machinery Business, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Converteam Electric Machinery Business; and

(3) The following intangible assets:

(a) All intangible assets owned, controlled, or maintained by the Converteam Electric Machinery Business, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the Converteam Electric Machinery Business, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to Converteam Electric Machinery Business employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Converteam Electric Machinery Business, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

(b) With respect to any intangible assets that are not included in paragraph II(G)(3)(a) above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, and/or sale of any product produced by the Converteam Electric Machinery Business, a non-exclusive, perpetual, worldwide, non-transferrable, royalty-free license for such intangible assets to be used for the design, development, manufacture, marketing, servicing, and/or sale of any of product produced by the Converteam Electric Machinery Business; provided, however, that any such license is transferrable to any future purchaser of all or substantially all of the Converteam Electric Machinery Business. Any improvements or modifications to these intangible assets developed by the Acquirer of the Converteam Electric Machinery Business shall be owned solely by that acquirer.

The Divestiture Assets shall not include Converteam's SAP Business Management Server and related applications, information, and documentation not used primarily by the Converteam Electric Machinery Business.

III. Applicability

A. This Final Judgment applies to GE and Converteam, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. GE is ordered and directed, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. GE agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, GE promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. GE shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. GE shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. GE shall make available such information to the United States at the same time that such information is made available to any other person.

C. GE shall provide the Acquirer and the United States information relating to the personnel involved in the production, operation, development and sale of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation of the Divestiture Assets, and the development, manufacture, and sale of any product produced by the Divestiture Assets.

D. GE shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the business to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. GE shall warrant to the Acquirer that the Divestiture Assets will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, use, or divestiture of the Divestiture Assets.

G. Notwithstanding paragraphs II(G)(3)(a) and (b) above, the Acquirer shall grant to defendants a non-exclusive, perpetual, worldwide, non-transferrable, royalty-free license to patents, copyrights, know-how, and other intellectual property (including but not limited to product designs, drawings, manufacturing techniques, specifications, product bills of materials, and supply chain information) owned by the Converteam Electric Machinery Business that prior to the filing of the Complaint in this matter were used in the design, development, manufacture, marketing, servicing, and/or sale of induction motors, brushless exciters, turbo generators, and/or synchronous generators designed, developed, produced, or sold by the Converteam Electric Machinery Business. This license is transferrable to any future purchaser of all or substantially all of the GE business unit using this license. This paragraph shall not be deemed to require the Acquirer to grant a license to defendants for any intellectual property owned by the Converteam Electric Machinery Business that is used primarily or exclusively in the design, development, manufacture, marketing, servicing, and/or sale of synchronous motors.

H. At the option of the Acquirer, GE shall, for a period not to exceed one (1) year: (1) allow the Acquirer to access and use the SAP Business Management Server in the same manner that the Converteam Electric Machinery Business had accessed and used the server prior to the filing of the Complaint in this matter, and (2) provide to the Acquirer transition services and technical assistance for the SAP Business Management Server that are reasonably necessary for the Acquirer to operate the Converteam Electric Machinery Business. Except for the provision of transition services and technical assistance to the Acquirer, GE shall not allow any GE or Converteam employee to access Converteam Electric Machinery Business information on the server. Upon the termination of the access and use rights and the transition services and technical support agreement, GE shall take all steps necessary to purge any information related to the Converteam Electric Machinery Business from the SAP Business Management Server.

I. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the development, production, and sale of low-speed synchronous motors to customers in North America. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the development, manufacture, and sale of low-speed synchronous motors to customers in North America; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If GE has not divested the Divestiture Assets within the time period specified in Section IV(A), GE shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court

deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of GE any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of GE, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to GE and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after the trustee's appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, GE shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and defendants of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any divestiture made pursuant to Section IV of this Final Judgment.

VIII. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, GE shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during

that period. Each such affidavit shall also include a description of the efforts GE has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by GE, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, GE shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. GE shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to the Antitrust Division, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court Approval Subject to Procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

[FR Doc. 2011–22623 Filed 9–2–11; 8:45 am]

BILLING CODE P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2011–7 CRB CD 2009]

Distribution of the 2009 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2009 cable royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2009 cable royalty funds.

DATES: Comments are due on or before October 6, 2011.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov*. In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board,

Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). These royalties are then distributed to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges (''Judges'') must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

On August 5, 2011, representatives of the Phase I claimant categories (the ''Phase I Parties'') [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2009 cable royalty funds pursuant to Section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). Under that section of the Copyright Act, before ruling on a partial distribution motion the Judges must publish a notice in the **Federal Register** seeking responses to the motion to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2009 cable royalty funds to the Phase I Parties. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2009 cable royalty funds at Phase I or Phase II with respect to those funds that would remain if the partial distribution is granted.

The Motion of Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: August 30, 2011.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2011–22620 Filed 9–2–11; 8:45 am]

BILLING CODE 1410–72–P

[1] The ''Phase I Parties'' are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants (represented by National Association of Broadcasters), Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), Canadian Claimants, National Public Radio, and the Devotional Claimants. In Phase I of a cable royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by cable systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music, public radio programming, and Canadian programming. In Phase II of a cable royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2011–8 CRB SD 2009]

Distribution of the 2009 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2009 satellite royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2009 satellite royalty funds.

DATES: Comments are due on or before October 6, 2011.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On August 5, 2011, representatives of the Phase I claimant categories (the ''Phase I Claimants'') [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2009 satellite royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section requires that the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive such fees has a reasonable objection to the requested distribution before ruling on the motion. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2009 satellite royalty funds to the Phase I Claimants. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2009 satellite royalty funds at Phase I or Phase II with respect to those funds that would

[1] The ''Phase I Claimants'' are the Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants. In Phase I of a satellite royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by satellite systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial broadcaster-owned programming, religious programming, and music. Public Television Claimants, Canadian Claimants, and National Public Radio, which traditionally have received Phase I shares of cable royalties, do not claim Phase I shares of the satellite royalty funds. In Phase II of a satellite royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

remain if the motion for partial distribution is granted.

The Motion of the Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: August 30, 2011.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2011–22621 Filed 9–2–11; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board (NSB) Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meeting for the transaction of NSB business and other matters specified, as follows:

DATE AND TIME: Tuesday, September 6, 2011 at 12–12:30 p.m., EDT.

SUBJECT MATTER: Chairman's Remarks, Approval of Minutes, NSF FY 2013 Budget, and Other Committee Business.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Blane Dahl, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Writer-Editor.

[FR Doc. 2011–22839 Filed 9–1–11; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board (NSB) pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meeting for the transaction of NSB business and other matters specified, as follows:

DATE AND TIME: Tuesday, September 6, 2011 at 12:30–12:45 p.m., EDT.

SUBJECT MATTER: Chairman's Remarks, Closed Committee Reports.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Ann Ferrante, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Writer-Editor.

[FR Doc. 2011–22848 Filed 9–1–11; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee on Nominations for the Class of 2012–2018, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Friday, September 9, 2011, from 10:30 to 11:30 a.m., EDT.

SUBJECT MATTER: Committee Chairman's Remarks, Discussion of the Nominee Candidate Pool and Finalization of the List of Recommended Candidates, Committee Chairman's Closing Remarks.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Kim Silverman, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Writer-Editor.

[FR Doc. 2011–22849 Filed 9–1–11; 4:15 pm]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Audit Committee Meeting of the Board of Directors; Sunshine Act

TIME AND DATE: 11:00 a.m., Thursday, September 8, 2011.

PLACE: 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. CALL TO ORDER
II. Executive Session with Internal Audit Director
III. Internal Audit Report with Management's Response
IV. FY '11 and '12 Risk Assessments and Internal Audit Plans
V. Internal Audit Resource Capacity Proposal
VI. Communication of Internal Audit Reports to External Parties/Posting of Internal Audit Reports to NW.org
VII. New Internal Audit Staff Hire Report
VIII. External Business Relationships
IX. Internal Audit Status Reports
X. Executive Session Related to Litigation and Special Review
XI. National Foreclosure Mitigation Counseling (NFMC)/Emergency Homeowners Loan Program (EHLP) Update
XII. CFO Update
XIII. OHTS Watch List
XIV. Pending Litigation
XV. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2011–22748 Filed 9–1–11; 11:15 am]

BILLING CODE 7570–02–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Corporate Administration Committee Meeting of the Board of Directors; Sunshine Act

TIME AND DATE: 1 p.m., Tuesday, September 6, 2011.

PLACE: 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. CALL TO ORDER
II. Update—Human Resources

III. Benefits Activities
IV. Employee Engagement
V. Board Composition
VI. Strategic Planning Update
VII. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2011–22749 Filed 9–1–11; 11:15 am]

BILLING CODE 7570–02–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Finance, Budget & Program Committee Meeting of the Board of Directors; Sunshine Act

TIME AND DATE: 2 p.m., Wednesday, September 7, 2011

PLACE: 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. CALL TO ORDER
II. Financial Report
III. Budget Report
IV. Lease Update
V. Corporate Scorecard
VI. National Foreclosure Mitigation Counseling (NFMC)
VII. Program Updates
VIII. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2011–22750 Filed 9–1–11; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0205]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 11, 2011 to August 24, 2011. The last biweekly notice was published on August 23, 2011 (76 FR 52699).

ADDRESSES: Please include Docket ID NRC–2011–0205 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0205. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0205.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the

Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at

http://www.nrc.gov/site-help/e-submittals.html. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: July 12, 2011.

Description of amendment request: The proposed license amendments would revise Technical Specification (TS) 3.4.5, ''Reactor Coolant System (RCS) Leakage Detection Instrumentation,'' to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. These proposed changes would be consistent with Standard Technical Specifications Change Traveler (TSTF)–514, ''Revise BWR Operability Requirements and Actions for RCS Leakage Instrumentation.'' The availability of TSTF–514 was announced in the **Federal Register** on December 17, 2010 (75 FR 79048), as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the primary containment atmosphere gaseous radioactivity monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS required operable RCS leakage detection instrumentation monitor is the primary containment atmosphere gaseous radioactivity monitor. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the primary containment atmosphere gaseous radioactivity monitor. Reducing the amount of time the plant is allowed to operate with only the primary containment atmosphere gaseous radioactivity monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Douglas A. Broaddus.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: April 29, 2011.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4.15, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. New Condition C is applicable when the reactor building atmosphere gaseous radioactivity monitor is the only operable TS-required monitor. New Condition C Required Actions require analyzing grab samples of the reactor building atmosphere every 12 hours and restoring another monitor within 7 days. These changes are consistent with NRC-approved Revision 3 to Technical Specification Task Force (TSTF) Standard Technical Specification (STS) Change Traveler TSTF–513, ''Revise PWR [Pressurized-Water Reactor] Operability Requirements and Actions for RCS Leakage Instrumentation.'' The availability of this TS improvement was announced in the **Federal Register** on January 3, 2011 (76 FRN 189), as part of the consolidated line item improvement process (CLIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the reactor building atmosphere gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the Proposed Change Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the reactor building atmosphere gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change maintains sufficient continuity and diversity of leak detection capability that the probability of piping evaluated and approved for Leak-Before-Break progressing to pipe rupture remains extremely low.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the reactor building atmosphere gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the reactor building atmosphere gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: April 6, 2011.

Description of amendment request: The proposed amendment would modify the actions to be taken when the atmospheric gaseous radioactivity monitor is the only operable reactor coolant leakage detection instrument. The modified actions require additional, more frequent monitoring of other indications of Reactor Coolant System (RCS) leakage and provide appropriate time to restore another leakage detection instrument to operable status. This change is consistent with the U.S. Nuclear Regulatory Commission (NRC) approved safety evaluation on Technical Specification Task Force (TSTF) Traveler, TSTF–514–A, Revision 3, ''Revised BWR [boiling-water reactor] Operability Requirements and Actions for RCS Leakage Instrumentation'' dated November 24, 2010.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC edits in brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed changes [ ] modify the time allowed for the plant to operate when the only Operable RCS leakage detection

instrumentation monitor is the atmospheric gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes [ ] modify the time allowed for the plant to operate when the only Operable RCS leakage detection monitor is the atmospheric gaseous radiation monitor. The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes [ ] increase the time allowed for the plant to operate when the only Operable RCS leakage detection instrumentation monitor is the atmospheric gaseous radiation monitor from 24 hours to 7 days. Increasing the amount of time the plant is allowed to operate with only the atmospheric gaseous radiation monitor Operable does not significantly decrease the margin of safety due to the addition of compensatory Required Actions to analyze grab samples of the primary containment atmosphere once per 12 hours and monitor Reactor Coolant System leakage by administrative means once per 12 hours. The overall likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure is maintained with the addition of the Required Actions.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, including the edits in brackets above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Richard B. Ennis, Acting.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: June 2, 2011.

Description of amendment request: The proposed amendment would modify Technical Specification Limiting Condition for Operation 3.1.2, ''Reactor Anomalies,'' to allow performance of the surveillance on a comparison of predicted to actual (or monitored) effective core reactivity (K_{eff}). The reactivity anomaly verification is currently determined by a comparison of predicted vs. actual control rod density.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with changes by the NRC staff noted in brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specifications changes do not [substantively] affect any plant systems, structures, or components designed for the prevention or mitigation of previously evaluated accidents. The amendment would only change how the reactivity anomaly surveillance is performed. Verifying that the core reactivity is consistent with predicted values ensures that accident and transient safety analyses remain valid. This amendment changes the Technical Specification requirements such that, rather than performing the surveillance by comparing predicted to actual control rod density, the surveillance is performed by a direct comparison of k_{eff}. Present day on-line core monitoring systems, such as the one in use at Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3 are capable of performing the direct measurement of reactivity.

Therefore, since the reactivity anomaly surveillance will continue to be performed by a viable method, the proposed amendment does not involve a significant increase in the probability or consequence of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This Technical Specifications amendment request does not [substantively change] the operation, testing, or maintenance of any safety-related, or otherwise important to safety systems. All systems important to safety will continue to be operated and maintained within their design bases. The proposed changes to the reactivity anomaly Technical Specifications will only provide a new, more efficient method of detecting an unexpected change in core reactivity.

Since all systems continue to be operated within their design bases, no new failure modes are introduced and the possibility of a new or different kind of accident is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This proposed Technical Specifications amendment proposes to change the method for performing the reactivity anomaly surveillance from a comparison of predicted to actual control rod density to a comparison of predicted to actual k_{eff}. The direct comparison of k_{eff} provides a technically superior method of calculating any differences in the expected core reactivity. The reactivity anomaly surveillance will continue to be performed at the same frequency as is currently required by the Technical Specifications, only the method of performing the surveillance will be changed. Consequently, core reactivity assumptions made in safety analyses will continue to be adequately verified.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, including the changes made by the NRC staff as noted in brackets, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: G. Edward Miller, Acting.

Florida Power Corporation, et al. (FPC), Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant (CR–3), Citrus County, Florida

Date of amendment request: December 20, 2010, as supplemented by the July 20, 2011 letter.

Description of amendments request: FPC will be constructing and operating an on-site independent spent fuel storage installation at CR–3, as a general licensee under the provisions of 10 CFR part 72, Subpart K to maintain full-core offload capacity in the spent fuel pools. The spent fuel pools are located in the CR–3 Auxiliary Building (AB). In support of future dry shielded canister/transfer cask loading operations, FPC is replacing the existing AB overhead crane with a new single failure proof crane designed in accordance with American Society of Mechanical Engineers (ASME) NOG–1–2004, ''Rules

for Construction of Overhead and Gantry Cranes (Top Running Bridge, Multiple Girder).'' The licensee requested NRC approval of the following:

1. An exception to ASME NOG–1–2004 pertaining to the application of tornado wind and tornado generated missile loading to auxiliary building overhead crane (FHCR–5) and its support structure.

2. Revisions to the CR–3 Final Safety Analysis Report (FSAR) Sections 5.1.1.1.h and 9.6.1.5.a.5 to specifically identify the design parameters for FHCR–5 and its support structure.

3. Deletion of a commitment in FSAR Section 9.6.3.1, ''Spent Fuel Assembly Removal,'' due to the expansion of spent fuel storage over that originally credited in the CR–3 Safety Evaluation Report dated July 5, 1974.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed LAR [license amendment request] does not involve plant equipment used to operate or shut down the reactor or in the mitigation of accidents described in Chapter 14 of the FSAR. FHCR–5 will be restricted from movement over fuel stored in either of the spent fuel pools by administrative controls and designated safe load paths when moving spent fuel casks, and it will be single failure proof so a cask load drop accident affecting stored spent fuel is prevented. The change provides justification for an exception to a Code requirement pertaining to the design and qualification of the new single failure proof crane in the AB. The new crane will meet the design specifications in ASME NOG–1–2004, with the exception of Section 4134(c). The change also includes a commitment not to operate the crane if an Approaching or Potential Tropical Storm, an Approaching or Potential Hurricane, or a Tornado Watch or Warning has been declared for the site. The revised FSAR description of the crane will meet the intent of the original description and will ensure the crane will exceed the design requirements of the original design. With the replacement of the crane, the occurrence of a cask load drop accident is not considered credible. As a result, the proposed change does not increase the probability or consequences of a load drop accident previously evaluated that could impact stored fuel and/or pool structural integrity.

Therefore, the proposed change does not involve significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The power generation portion of the plant is unaffected by the proposed change, which is limited to the design and analysis of a new overhead crane in the AB. The location and design functions of the AB overhead crane remain as they are currently described in the CR–3 FSAR. Overall, the design of the crane is being enhanced to single failure proof in order to reduce the likelihood of an uncontrolled lowering of the load due to an unforeseen malfunction or subcomponent failure. Portions of the design and analysis of the crane require NRC approval because they deviate from the NRC-endorsed design code for single failure proof cranes and the CR–3 licensing basis. The new single failure proof crane will be used to move a loaded or unloaded transfer cask between the cask loading pit, the decontamination pit, and the transfer trailer in the truck bay. Any credible event involving the fuel handling evolutions are bounded by existing FSAR analyses.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

This proposed LAR involves the replacement of the existing non-single failure proof AB overhead crane with a new single failure proof crane. The new crane will meet the design specifications found in ASME NOG–1–2004, with the exception of Section 4134(c). ASME NOG–1–2004 has been endorsed by the NRC in Regulatory Issue Summary (RIS) 2005–25, Supplement 1, ''Clarification of NRC Guidelines for Control of Heavy Loads,'' as an acceptable means of meeting the criteria in NUREG–0554, ''Single Failure Proof Cranes for Nuclear Power Plants.'' The ASME NOG–1–2004 design code has been found by the NRC to provide adequate protection and safety margin against the uncontrolled lowering of the lifted load. The occurrence of a cask load drop accident is considered not credible when the load is lifted with a single failure proof lifting system meeting the guidance in NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants,'' Section 5.1.6, ''Single Failure Proof Handling Systems.'' As a result, the proposed change has no adverse impact on new fuel, stored spent fuel, cooling capacity of the pool, or structural integrity of the pool. Similarly, the margin of safety for the operation and safe shutdown of the plant will not be affected by the proposed change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Douglas A. Broaddus.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: July 14, 2011.

Description of amendment request: The proposed change would replace the Technical Specification (TS) required 10-year surveillance frequency for testing the containment spray nozzles in accordance with TS surveillance 4.6.2.1.d with an event-based frequency. Specifically, verification that the spray nozzle is unobstructed would only be required following activities that could result in nozzle blockage.

Basis for proposed no significant hazards consideration (NSHC) determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The spray nozzles and the associated containment spray system (CBS) are designed to perform accident mitigation functions. The proposed change to reduce the frequency and remove specific details of surveillance testing that verifies the spray nozzles are unobstructed does not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. The proposed change neither adversely affects accident initiators or precursors, nor alters design assumptions. The proposed change does not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits. The capability of the CBS system to perform its accident mitigation functions is not adversely affected by the proposed change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change will not impact the accident analysis. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a significant change in the method of plant operation, or new operator actions. The change does not make any physical modifications to the CBS system, changes to setpoints, or changes to the method of delivering borated water to the CBS spray nozzles. The proposed change will not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change does not involve a significant change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC. *Attorney for licensee:* M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Harold K. Chernoff.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2 (VEGP), Burke County, Georgia

Date of amendment request: July 26, 2011.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs). Specifically, the proposed change would revise the minimum indicated nitrogen cover pressure specified for the accumulators in TS Surveillance Requirement (SR) 3.5.1.3 from 617 psig (pounds per square inch, gauge) to 626 psig. The proposed change is necessary to account for the uncertainty associated with the accumulator pressure indication instrumentation. Currently, in accordance with NRC Administrative Letter 98–10, ''Dispositioning of Technical Specifications that Are Insufficient to Assure Plant Safety,'' VEGP is administratively controlling the minimum indicated accumulator pressure to greater than or equal to 626 psig. In addition, an editorial error in the text of TS SR 3.6.2.1 would also be corrected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed amendment revises the minimum indicated nitrogen cover pressure specified for the SI [safety injection] accumulators in SR 3.5.1.3 from 617 psig to 626 psig. In addition, the proposed change includes an administrative change to correct an editorial error in the text of TS SR 3.6.2.1.

The SI accumulators are not a precursor to any accident previously evaluated. The SI accumulators are used to mitigate the consequences of accidents previously evaluated. The proposed change to the indicated minimum SI accumulator nitrogen cover pressure provides assurance that the requirements of the TS continue to bound the acceptance limits of the SI accumulators with respect to the assumptions in the LOCA [loss-of-coolant accident] analyses.

Thus, the proposed change does not affect the probability or the consequences of any accident previously evaluated. The proposed change to correct an editorial error in the text of SR 3.6.2.1 has no impact on the probability or consequences of any accident previously evaluated.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change revises the minimum indicated nitrogen cover pressure specified for the SI accumulators in SR 3.5.1.3 from 617 psig to 626 psig. In addition, the proposed change includes an administrative change to correct an editorial error in the text of TS SR 3.6.2.1.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change to the requirements of the TS assure that the acceptance limits of the SI accumulators with respect to the assumptions in the LOCA analyses continue to be met, and correct an editorial error in the text of an SR. Thus, the proposed change does not adversely affect the design function or operation of any structures, systems, and components important to safety.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

The proposed change revises the minimum indicated nitrogen cover pressure specified for the SI accumulators in SR 3.5.1.3 from 617 psig to 626 psig. In addition, the proposed change includes an administrative change to correct an editorial error in the text of TS SR 3.6.2.1.

The proposed change to the indicated SI accumulator nitrogen cover pressure provides assurance that the requirements of the TS continue to bound the acceptance limits of the SI accumulators with respect to the assumptions in the LOCA analyses. Thus the proposed change to the SI accumulator minimum nitrogen cover pressure assures the existing margin of safety is maintained. The proposed change to correct an editorial error in the text of SR 3.6.2.1 has no impact on the margin of safety.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. *Attorney for licensee:* Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216. *NRC Branch Chief:* Gloria Kulesa.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: July 15, 2011 (TS–SQN–2011–01).

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) requirements for steam generator (SG) tube inspections to reflect the replacement steam generators (RSGs) to be installed during Sequoyah Nuclear Plant (SQN), Unit 2, refueling outage 18 presently scheduled for the fall of 2012. Previous changes to the SQN, Unit 2, TSs to reflect the Technical Specification Task Force (TSTF) Standard Technical Specification Traveler, TSTF–449, ''Steam Generator Tube Integrity,'' Revision 4, were approved by Nuclear Regulatory Commission (NRC) on May 22, 2007. The changes proposed in this amendment reflect the inspection requirements of TSTF–449, Revision 4. The RSG tubes will be made of Alloy 690 thermally treated (TT) material, and the existing SGs have Alloy 600 tubes. The revisions to TSs are required because the inspection frequency for Alloy 690 TT tube material, as defined

in TSTF–449, differs from the inspection frequency for Alloy 600, and the tube repair processes and products in the existing TSs are not applicable to the RSGs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change for RSGs continues to implement the current SG Program that includes performance criteria which provide reasonable assurance that the RSG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown, and all anticipated transients included in the design specifications). This change removes repair criteria from the SG Program that were approved by previous License Amendments for the existing SGs which are not applicable to the RSGs. It removes references to use of repairs and reporting of repair results in other TS sections. This change removes inspection requirements that are designated for specific damage conditions in the existing SGs. The change also revises the inspection interval for 100 percent inspections of SG tubes and the maximum interval for inspection of a single SG consistent with Technical Specification Task Force (TSTF) Standard Technical Specification Traveler, TSTF–449, ''Steam Generator Tube Integrity,'' Revision 4 for the Alloy 690 tube material in the RSGs. The revised inspection requirements are based on properties and experience with the improved Alloy 690 tube material. The revised inspection requirements will result in the same outcome that SG tube integrity will continue to be maintained.

This change continues to implement SG performance criteria for tube structural integrity, accident induced leakage, and operational leakage for the RSGs. Meeting the performance criteria provides reasonable assurance that the RSG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident (DBA). The performance criteria are only a part of the SG Program required by the existing TS. The program, defined by NEI [Nuclear Energy Institute] 97–06, ''Steam Generator Program Guidelines,'' includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. These features will continue to be implemented as they are currently approved. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of DBAs are, in part, functions of the Dose Equivalent 1–131 in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the TS for Operational Leakage and for Dose Equivalent 1–131 in the primary coolant to ensure the plant is operated within its analyzed condition. The analysis of the limiting DBA assumes that the primary to secondary leak rate, after the accident, is 1 gallon per minute with no more than 150 gallons per day in any one SG, and that the reactor coolant activity levels of Dose Equivalent 1–131 are at the TS values before the accident. The proposed change to the SG inspection program does not affect the design of the SGs, their method of operation, operational leakage limits, or primary coolant chemistry controls. The proposed change does not adversely impact any other previously evaluated DBA. In addition, the proposed changes do not affect the consequences of a main steam line break, rod ejection, a reactor coolant pump locked rotor event, or other previously evaluated accident.

Therefore, the proposed change does not affect the consequences of a[n] SG tube rupture accident and the probability of such an accident is unchanged.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment does not affect the method of operation of the SGs, or the primary or secondary coolant chemistry controls. In addition, the proposed amendment does not impact any other plant system or component. The change modifies existing SG inspection requirements based on the RSG design and the properties and experience associated with their improved materials. The revised inspection requirements will result in the same outcome that SG tube integrity will continue to be maintained.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a[n] SG is maintained by ensuring the integrity of its tubes. SG tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change to the SG inspection program does not affect tube design or operating environment. The existing SG Program is maintained in this change. The repair criteria that are being removed are specific to the existing SGs and are not applicable to the RSGs. If tube defects are detected that exceed limits in the RSGs, then the tube will be removed from service. The effective tube plugging percentage will continue to be tracked for all plugging in each SG in accordance with TS Section 6.9.1.16.1 to ensure the heat transfer function of the SGs is not adversely affected. For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket No. 50–278, Peach Bottom Atomic Power Station (PBAPS), Unit 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: June 28, 2011.

Brief description of amendment request: The proposed amendment would modify the PBAPS, Unit 3, Technical Specification Section 2.1.1 to revise Safety Limit Minimum Critical Power Ratio values.

Date of publication of individual notice in **Federal Register:** August 22, 2011 (76 FR 52357).

Expiration date of individual notice: September 21, 2011 (public comments) and October 21, 2011 (hearing requests).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit 1 and 2, Calvert County, Maryland

Date of application for amendments: March 22, 2011.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status. The proposed TS changes are consistent with TS Task Force (TSTF)-513, ''Revise PWR [pressurized-water reactor] Operability Requirements and Actions for RCS Leakage Instrumentation.''

Date of issuance: August 24, 2011.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment Nos.: 299 and 276.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 2011 (76 FR 21920).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated August 24, 2011.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, LLC,

Calvert Cliffs Nuclear Power Plant, Unit 1 and 2 (CCNPP),
Docket Nos. 50–317, 50–318,
Calvert County, Maryland,
Nine Mile Point Nuclear Station, LLC,
Nine Mile Point Nuclear Station, Unit 1 and 2 (NMPNS),
Docket Nos. 50–220, 50–410,
Oswego County, New York, and
R. E. Ginna Nuclear Power Plant, LLC,
R. E. Ginna Nuclear Power Plant (Ginna),
Docket No. 50–244, Wayne County, New York

Date of amendment request: July 16, 2010, as supplemented by letters dated April 4, and July 1, 2011.

Brief description of amendments: The amendments to the Renewed Facility Operating Licenses (FOLs) includes: (1) The U.S. Nuclear Regulatory Commission (NRC)-approved Cyber Security Plan (CSP) for CCNPP, NMPNS, and Ginna, (2) the CSP implementation schedule, and (3) the license condition added to the existing physical protection license condition for CCNPP, NMPNS, and Ginna, requiring the licensee to fully implement and maintain in effect all provisions of the NRC-approved CSP for CCNPP, NMPNS, and Ginna, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) 73.54 ''Protection of digital computer and communication systems and networks.'' A **Federal Register** notice dated March 27, 2009, issued the final rule that amended 10 CFR 73.54. The regulations in 10 CFR 73.54, establish the requirements for a CSP. This regulation specifically requires each licensee currently licensed to operate a nuclear power plant under Part 50 of this chapter to submit a CSP that satisfies the requirements of the Rule. Each submittal must include a proposed implementation schedule and implementation of the licensee's CSP must be consistent with the approved schedule. The background for this application is addressed by the NRC Notice of Availability, **Federal Register** Notice, Final Rule 10 CFR part 73, Power Reactor Security Requirements, published on March 27, 2009, 74 FR 13926.

Date of issuance: August 19, 2011.

Effective date: These license amendments are effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on July 16, 2010, as supplemented by letters dated April 4, and July 1, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 298, 275 (CCNPP1 & CCNPP2), 209, 137 (NMPNS1 & NMPNS2), and 113 (Ginna),.

Renewed Facility Operating License Nos. DPR–53 and DPR–69 (CCNPP1 & CCNPP2), DPR–63, NPF–69, (NMP1 & NMP2), and DPR–18 (Ginna),: Amendments revised the Licenses.

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62594). The supplement dated April 4, and July 1, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated August 19, 2011.

No significant hazards consideration comments received: Yes.

The State of Maryland had no comments. However, the New York State provided comments. The Safety

Evaluation dated August 19, 2011, provides the discussion of the comments received from the New York State.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (JAFNPP), Oswego County, New York

Date of application for amendment: July 15, 2010, as supplemented by letters dated February 15 and April 4, 2011.

Brief description of amendment: The application for the proposed amendment to the Renewed Facility Operating License (FOL) includes: (1) The proposed JAFNPP Cyber Security Plan, (2) an implementation schedule, and (3) a proposed sentence to be added to the existing renewed FOL Physical Protection license condition for JAFNPP requiring Entergy to fully implement and maintain in effect all provisions of the Commission-approved JAFNPP Cyber Security Plan (CSP) as required by 10 CFR 73.54, ''Protection of digital computer and communication systems and networks.'' A **Federal Register** notice dated March 27, 2009, issued the final rule that amended 10 CFR part 73. The regulations in 10 CFR 73.54, establish the requirements for a cyber security program. This regulation specifically requires each licensee currently licensed to operate a nuclear power plant under Part 50 of this chapter to submit a CSP that satisfies the requirements of the Rule. Each submittal must include a proposed implementation schedule and implementation of the licensee's Cyber Security Program must be consistent with the approved schedule. The background for this application is addressed by the NRC Notice of Availability, **Federal Register** Notice, Final Rule 10 CFR part 73, Power Reactor Security Requirements, published on March 27, 2009 (74 FR 13926).

Date of issuance: August 19, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on July 15, 2010, as supplemented by letters dated February 15 and April 4, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 300.

Renewed Facility Operating License No. DPR–59: The amendment revised the License

Date of initial notice in **Federal Register:** August 20, 2010 (75 FR 51492). The supplements dated February 15, and April 4, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 2011.

No significant hazards consideration comments received: Yes.

The Safety Evaluation dated August 19, 2011, provides the discussion of the comments received from the New York State.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: September 23, 2010 as supplemented by letter dated. April 22, 2011.

Brief description of amendment: The amendment revised Technical Specification (TS) limiting condition for operation 3.7.6, ''Main Turbine Bypass System (MTBS),'' to control the reactor operational limits, as specified in the Clinton Power Station Core Operating Limits Report to compensate for the inoperability of the MTBS.

Date of issuance: August 17, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 195.

Facility Operating License No. NPF–62: The amendment revised the TSs and license.

Date of initial notice in **Federal Register:** February 1, 2011 (76 FR 5618). The April 22, 2011 supplement contained clarifying information and did not change the NRC staff=s initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 2011.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: September 22, 2010, supplemented by letter dated April 7, 2011.

Brief description of amendment: The changes relocate the list of pumps, fans, and valves in Technical Specification (TS) 4.5.1.1b, Sequence and Power Transfer Test, to the TMI–1 Updated Final Safety Analysis Report. In place of the TS equipment listing there will be a more general reference to the permanently-connected and automatically-connected emergency loads which are tested through the load sequencer. In addition, TS 4.5.1.2b, TS 4.5.2.2a, and TS 4.5.2.2b refer to this test and are revised to reflect the change to TS 4.5.1.1b.

Date of issuance: August 22, 2011.

Effective date: Immediately, and shall be implemented within 30 days.

Amendment No.: 276.

Renewed Facility Operating License No. DPR–50. Amendment revised the license and the technical specifications.

Date of initial notice in **Federal Register:** November 30, 2010 (75 FR 74095). The supplement dated April 7, 2011, modified the application such that the **Federal Register** notice was re-issued on May 3, 2011 (76 FR 24928). The revised notice did not change the NRC staff's proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 2011.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: December 29, 2010.

Description of amendment request: The proposed change deletes the Seabrook Technical Specification (TS) 3.4.10, ''Structural Integrity,'' while relocating the requirements of Surveillance Requirement 4.4.10 to TS 6.7.6.m.

Date of issuance: August 22, 2011.

Effective date: As of its date of issuance and shall be implemented within 60 days.

Amendment No.: 126.

Facility Operating License No. NPF–86: The amendment revised the TS and the License.

Date of initial notice in **Federal Register:** May 31, 2011 (76 FR 31375).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 2011.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: July 26, 2010, as supplemented by letters dated September 28, 2010, March 31, June 23, and August 4, 2011.

Description of amendment request: This amendment approves the NextEra Seabrook LLC, cyber security plan (CSP) for Seabrook Station, Unit 1. Additionally, the amendment adds a license condition requiring that the licensee fully implement and maintain in effect all provisions of the approved plan.

Date of issuance: August 23, 2011.

Effective date: The license amendment is effective as of its date of issuance. The implementation of the CSP, including key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee by letter dated March 31, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 127.

Facility Operating License No. NPF–86: The amendment revised the License.

Date of initial notice in **Federal Register:** May 10, 2011 (76 FR 27097).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 2011.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: March 18, 2011, as supplemented by letters dated May 4 and June 2, 2011.

Brief description of amendments: The amendments modified the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Independent Spent Fuel Storage Installation Security Program.

Date of issuance: August 16, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 203, 190.

Facility Operating License Nos. DPR–42 and DPR–60: The amendments revised the Operating Licenses for both units.

Date of initial notice in **Federal Register:** May 10, 2011 (76 FR 27098). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 16, 2011.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: August 5, as supplemented September 27, and November 30, 2010 and March 28, 2011.

Brief description of amendment: The amendments revised Paragraph 2.E of the renewed facility operating license to provide a license condition to require the licensee to fully implement and maintain in effect all provisions of the NRC-approved Cyber Security Plan and associated implementation schedule.

Date of issuance: August 24, 2011.

Effective date: This license amendment is effective as of its date of issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on March 28, 2011, and approved by the Nuclear Regulatory Commission (NRC) staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 184 .

Renewed Facility Operating License No. NPF–12: Amendment revised the license.

Date of initial notice in **Federal Register:** April 12, 2011 (76 FR 20380). The September 27, 2010, and March 28, 2011, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 2011.

No significant hazards consideration comments received: No

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 12, 2010, as supplemented by letters dated September 27, November 29, and December 30, 2010, and April 1, June 14, and June 29, 2011.

Brief description of amendment: The amendment approved the Callaway Plant, Unit 1, Cyber Security Plan and associated implementation schedule, and revised Paragraph 2.E of Facility Operating License No. NPF–30 to provide a license condition to require the licensee to fully implement and maintain in effect all provisions of the NRC-approved Cyber Security Plan. The proposed change is generally consistent with Nuclear Energy Institute (NEI) 08–09, Revision 6, ''Cyber Security Plan for Nuclear Power Reactors.''

Date of issuance: August 17, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the cyber security plan (CSP), including the key intermediate milestone dates and the full implementation date, shall be in accordance with the revised implementation schedule submitted by the licensee on June 29, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 203.

Facility Operating License No. NPF–30: The amendment revised the Operating License.

Date of initial notice in **Federal Register:** November 9, 2010 (75 FR 68837). The supplemental letters dated September 27, November 29, and December 30, 2010, and April 1, June 14, and June 29, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 25th day of August 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–22541 Filed 9–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0208]

Implementation of the Alternative Dispute Resolution Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting and request for nomination of participants in panel discussions.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is planning to hold a public meeting in late October 2011 or early November 2011 to solicit feedback from its stakeholders on its Alternative Dispute Resolution (ADR) Program in the Office of Enforcement (OE). The meeting will be composed of panel discussions addressing implementation of the ADR program and whether changes could be made to the program to make it more effective, transparent and efficient. The NRC is also soliciting nominations and requests to participate in the panel discussions.

DATES: Submit nominations and requests to participate in the panel discussions by September 16, 2011. A meeting notice with the date, time, and location of the meeting will be available on the NRC Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* at least 10 days prior to the meeting.

ADDRESSES: Individuals or organizations with an interest in the NRC's ADR Program are encouraged to nominate themselves or to submit names of individuals who will represent their specific organization in the panel discussion portion of the meeting, to the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

You can access publicly available documents related to this action using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0208.

FOR FURTHER INFORMATION CONTACT: Shahram Ghasemian, telephone: 301–415–3591 or by e-mail to *Shahram.Ghasemian@nrc.gov;* or Maria Schwartz, *telephone:* 301–415–1888 or by e-mail to *Maria.Schwartz@nrc.gov.* Both of these individuals can also be contacted by mail at the U.S. Nuclear Regulatory Commission, Office of Enforcement, Concerns Resolution Branch, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Administrative Dispute Resolution Act (Act) which requires each Federal agency to, among other things; adopt a policy that addresses the use of ADR for resolving disputes in connection with agency programs. While the Act authorizes and encourages the use of ADR, it does not require its use. Whether to use or not to use ADR is at an agency's discretion; additionally, participation in ADR processes is by agreement of the disputants. In 2004, the Commission incorporated the use of ADR in its Enforcement Program in order to achieve more timely and economical resolution of issues, more effective outcomes and improved relationships.

The OE oversees, manages, and develops guidance for the NRC's ADR program. The ADR program is comprised of two entirely different sub-programs; the first is pre-investigation (commonly referred to as ''Early ADR'') and the second is post-investigation. The NRC established the early ADR program in 2004. The early ADR program provides an individual and his or her employer (or former employer) the opportunity to resolve the individual's allegation of discrimination through mediation rather than to fully litigate the discrimination allegation or have the NRC initiate an investigation into the allegation of discrimination. Mediation is an informal and voluntary process between an individual and his or her employer (or former employer) in which a trained mediator works with the parties to help them settle their dispute. Early resolution of discrimination allegations tends to preserve relationships and generally promotes a safety conscious work environment by facilitating timely and amicable resolution of discrimination concerns without resorting to prolonged litigation and unnecessary expenses. The second sub-program (commonly referred to as ''Post-Investigation ADR'') refers to the use of mediation after the completion of an investigation by the NRC's Office of Investigations (OI) and the staff's conclusion that the pursuit of an enforcement action appears warranted. It is offered at three stages after the completion of an investigation by OI: (1) Before an initial enforcement action; (2) after the initial enforcement action is taken, typically upon issuance of a notice of violation; and (3) when a civil penalty is imposed but before a hearing request. Post-investigation ADR may produce more timely and effective outcomes for the NRC and an entity (*e.g.,* an NRC licensee, certificate holder, or contractor of an NRC licensee or certificate holder) or an individual who is subject to an enforcement action. Participation in either early or post-investigation ADR is entirely voluntary. The parties involved may withdraw from the mediation process at any time. If mediation is unsuccessful in the case of early ADR, OI may initiate an investigation into the allegation of discrimination; while, in the case of post-investigation ADR, OE may proceed with an enforcement action.

The ADR has become an important aspect of the NRC's enforcement program. Because ADR is increasingly used in enforcement, the NRC believes it is time to examine our implementation of this program. The staff is seeking to move forward with this examination through a meeting planned for the end of October 2011 or beginning of November 2011.

In addition to this FRN, the NRC will be issuing a separate FRN in September 2011, to provide individuals and organizations with an interest in the NRC's ADR program, an opportunity to comment on the ADR program.

II. Public Meeting

The goal of this meeting is to provide a forum in which stakeholders, including the NRC, can discuss the NRC's current ADR Program (early ADR and post-investigation ADR). The ADR has become an important aspect of the NRC's enforcement program. Because

ADR is increasingly used in enforcement, the NRC believes it is time to examine our implementation of this program. This meeting will allow stakeholders to provide feedback regarding their perceptions of the ADR program's effectiveness, transparency, and timeliness, to include, for example, identifying criteria for determining whether early ADR and/or post-investigation ADR should be offered in specific cases; and whether additional criteria should be developed for offering early ADR for violations other than discrimination and post-investigation ADR for violations that do not involve wrongdoing.

To ensure that this process is open, effective, and collaborative, the format of the meeting will consist of panel discussions among stakeholders, including a representative from the NRC, representatives from NRC-regulated nuclear industries, public-interest groups, and members of the public. The panel discussions will be followed by interactive discussions with other meeting attendees. The NRC is requesting that individuals or organizations with an interest in this initiative nominate/self-nominate individuals to participate in the panel discussions. Nominations and requests to participate in the panel discussions are requested by September 16, 2011. Nominations should include information supporting the nomination such as affiliation(s) and expertise.

The NRC will use the nominations and information supporting the nomination to select final participants with a goal of ensuring a broad spectrum of views and backgrounds. Nominated individuals who are not selected to participate in the panel discussions are highly encouraged to attend the meeting where there will be opportunities to offer input.

The public meeting will be held at the NRC Headquarters building located at 11555 Rockville Pike, Rockville, MD 20852. Because on-street parking is extremely limited, the most convenient transportation to the meeting is via Metro's Red Line to the White Flint Stop which is directly across the street from NRC Headquarters. Please allow time to register with building security upon entering the building. Those unable to travel and attend in person may participate by Webinar. The meeting notices on the NRC Public Meeting Schedule Web site will provide information on how those unable to participate in person may do so via Webinar. Prior to the meeting, attendees are requested to register with one of the contacts listed in this FRN or that will be listed in the meeting notice which will provide the date, time, and location of the meeting so that sufficient accommodations can be made for their participation. Please let the contact know if special services, such as services for the hearing impaired, translation services, etc., are necessary. Please check the NRC Web site (*http://www.nrc.gov/public-involve/conferences.html* and/or *http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html*) for any updates to the meeting schedule and/or additional information about this meeting.

Dated at Rockville, Maryland, this *25th* day of August 2011.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2011–22645 Filed 9–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0212]

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG) DG–1278, ''Monitoring the Effectiveness of Maintenance at Nuclear Power Plants.'' This guide endorses Revision 4A to Nuclear Management and Resources Council (NUMARC) 93–01, ''Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' which provides methods that are acceptable to the NRC staff for complying with the provisions of Section 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' of Title 10, of the *Code Of Federal Regulations,* part 50, ''Domestic Licensing of Production and Utilization Facilities.''

DATES: Submit comments by October 31, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC–2011–0212 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0212. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this regulatory guide using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The draft

regulatory guide is available electronically under ADAMS Accession Number ML111640267 and the regulatory analysis under ADAMS Accession Number ML111640279. NUMARC 93–01 is available under ADAMS Accession Number ML11116A198.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0212.

• *NRC's public Web site:* Electronic copies of DG–1278 are also available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC Library at *http://www.nrc.gov/reading-rm/doc-collections/*. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Robert G. Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7483 or e-mail *Robert.Carpenter@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

This draft regulatory guide is temporarily identified by its task number, DG–1278, which should be mentioned in all related correspondence. DG–1278 is the proposed revision 3 of Regulatory Guide 1.160.

This regulatory guide endorses NUMARC 93–01 which provides methods that are acceptable to the NRC staff for complying with the provisions of Section 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' of 10 CFR part 50.

Dated at Rockville, Maryland, this 26 day of August, 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–22644 Filed 9–2–11; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice; Board of Directors Meeting; September 22, 2011

TIME AND DATE: Thursday, September 22, 2011, 10 a.m. (Open Portion), 10:15 a.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting Open to the Public from 10 a.m. to 10:15 a.m., Closed portion will commence at 10:15 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of June 23, 2011 Minutes (Open Session).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 10:15 a.m.)

1. Reports.
2. Proposed FY 2013 Budget.
3. Recommendations of the Ad-Hoc Board Committee on Governance.
4. Finance Project—India.
5. Finance Project—Nigeria.
6. Finance Project—Thailand.
7. Finance Project—Kenya.
8. Approval of June 2, 2011 Minutes (Closed Session).
9. Approval of the June 23, 2011 Minutes (Closed Session).
10. Pending Major Projects.

Written summaries of the projects to be presented will be posted on OPIC's Web site on or about September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2011–22794 Filed 9–1–11; 11:15 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–55; Order No. 830]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Fishers Landing, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due* (*from Postal Service*): September 12, 2011; *deadline for notices to intervene:* September 26, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

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 the **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 *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on August 26, 2011, the Commission received a petition for review of the Postal Service's determination to close the Fishers Landing post office in Fishers Landing, New York. The petition was filed by Michael Brayen (Petitioner) and is postmarked August 18, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–55 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than September 30, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 12, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 12, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39–CFR–3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 26, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 12, 2011.
2. Any responsive pleading by the Postal Service to this notice is due no later than September 12, 2011.
3. The procedural schedule listed below is hereby adopted.
4. Pursuant to 39 U.S.C. 505, Malin Moench is designated officer of the Commission (Public Representative) to represent the interests of the general public.
5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

PROCEDURAL SCHEDULE

August 26, 2011	Filing of Appeal.
September 12, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 12, 2011	Deadline for the Postal Service to file any responsive pleading.
September 26, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
September 30, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 20, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 4, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 14, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 16, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–22661 Filed 9–2–11; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9255; 34–65231/August 31, 2011]

Order Making Fiscal Year 2012 Annual Adjustments to Registration Fee Rates

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (''Securities Act'') requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3]

The Investor and Capital Markets Fee Relief Act of 2002 (''Fee Relief Act'')[4] has required the Commission to make annual adjustments to the fee rates applicable under these sections for each of the fiscal years 2003 through 2011 in an attempt to generate collections equal to yearly targets specified in the statute.[5] Under the Fee Relief Act, each year's fee rate has been announced on the preceding April 30, and has taken effect five days after the date of enactment of the Commission's regular appropriation.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') changes many of the provisions related to these fees. The

[1] 15 U.S.C. 77f(b).
[2] 15 U.S.C. 78m(e).
[3] 15 U.S.C. 78n(g).
[4] Pub. L. 107–123, 115 Stat. 2390 (2002).
[5] *See* 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(5), and 78n(g)(6).

Dodd-Frank Act created new annual collection targets for FY 2012 and thereafter. It also changed the date by which the Commission must announce a new fiscal year's fee rate (August 31) and the date on which the new rate takes effect (October 1).

II. Fiscal Year 2012 Annual Adjustment to the Fee Rate

Section 6(b)(2) of the Securities Act, as amended by the Dodd-Frank Act, requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b).[6] The annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.[7]

Section 6(b)(2) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2012. Specifically, the Commission must adjust the fee rate under Section 6(b) to a ''rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2012], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target fee collection amount for [fiscal year 2012].'' That is, the adjusted rate is determined by dividing the ''target fee collection amount'' for fiscal year 2012 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2012.

Section 6(b)(6)(A) specifies that the ''target fee collection amount'' for fiscal year 2012 is $425,000,000. Section 6(b)(6)(B) defines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2012 as ''the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2012] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget * * *.''

To make the baseline estimate of the aggregate maximum offering price for fiscal year 2012, the Commission used a methodology similar to that developed in consultation with the Congressional Budget Office (''CBO'') and Office of Management and Budget (''OMB'') to project the aggregate offering price for purposes of the fiscal year 2012 annual adjustment.[8] Using this methodology, the Commission determines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2012 to be $3,708,294,634,490.[9] Based on this estimate, the Commission calculates the fee rate for fiscal 2012 to be $114.60 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

III. Effective Dates of the Annual Adjustments

The fiscal year 2012 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act will be effective on October 1, 2011, under the changes made by the Dodd-Frank Act.[10]

IV. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act,[11]

It Is Hereby Ordered that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be $114.60 per million effective on October 1, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

Appendix A

With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the ''aggregate maximum offering prices,'' which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2012, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an ARIMA model was used to forecast the value of the aggregate maximum offering prices for months subsequent to July 2011, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2012

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (July 2001–July 2011). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more ''typical'' value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from July 2001 to July 2011.

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software. Using least

[6] The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the ''target fee collection amount'' specified in Section 6(b)(6)(A) for that fiscal year.

[7] *See* Sections 13(e)(6) and 14(g)(6) of the Exchange Act. On October 1, 2011, Sections 13(e)(4) and 14(g)(6) of the Exchange Act, as amended by the Dodd-Frank Act, will require an annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act to the same level as the new the fee rate under Section 6(b) of the Securities Act.

[8] For the fiscal year 2011 estimate, the Commission used a ten-year series of monthly observations ending in March 2010. For fiscal year 2012, the Commission used a ten-year series ending in July 2011.

[9] Appendix A explains how we determined the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2012 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2012 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2012.

[10] On October 1, 2011, Section 6(b)(4) of the Securities Act and Sections 13(e)(6) and 14(g)(6) of the Exchange Act, as amended by the Dodd-Frank Act, will require the fiscal year 2012 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act to be effective on October 1, 2011.

[11] 15 U.S.C. 77f(b), 78m(e), and 78n(g).

squares, the estimated parameter values are $\alpha = 0.0005219$ and $\beta = -0.87539$.

6. For the month of August 2011 forecast $\Delta_{t = 8/11} = \alpha + \beta e_{t = 8/11}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for October 2011 is given by $FLAAMOP_{t = 10/11} = \log(AAMOP_{t = 7/11}) + \Delta_{t = 8/11} + \Delta_{t = 9/11} + \Delta_{t = 10/11}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For October 2011, this gives a forecast AAMOP of $14.6 Billion (Column I), and a forecast AMOP of $307.6 Billion (Column J).

10. Iterate this process through September 2012 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2012 of $3,708,294,634,490.

B. Using the Forecasts From A To Calculate the New Fee Rate.

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/1/11 and 9/30/12 to be $3,708,294,634,490.

2. The rate necessary to collect the target $425,000,000 in fee revenues set by Congress is then calculated as: $425,000,000 ÷ $3,708,294,634,490 = 0.000114608.

3. Round the result to the seventh decimal point, yielding a rate of 0.0001146 (or $114.60 per million).

BILLING CODE 8011–01–P

Table A. Estimation of baseline of aggregate maximum offering prices.

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/1/11 to 9/30/12 ($Millions)	3,708,295
b. Implied fee rate ($425 Million / a)	$114.60

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Jul-01	21	264,590	12,600	23.257					
Aug-01	23	245,591	10,678	23.091	-0.165				
Sep-01	15	178,524	11,902	23.200	0.108				
Oct-01	23	260,719	11,336	23.151	-0.049				
Nov-01	21	286,199	13,629	23.335	0.184				
Dec-01	20	395,230	19,762	23.707	0.372				
Jan-02	21	401,290	19,109	23.673	-0.034				
Feb-02	19	476,837	25,097	23.946	0.273				
Mar-02	20	380,160	19,008	23.668	-0.278				
Apr-02	22	282,947	12,861	23.277	-0.391				
May-02	22	215,645	9,802	23.006	-0.272				
Jun-02	20	277,757	13,888	23.354	0.348				
Jul-02	22	208,638	9,484	22.973	-0.381				
Aug-02	22	265,750	12,080	23.215	0.242				
Sep-02	20	109,565	5,478	22.424	-0.791				
Oct-02	23	179,374	7,799	22.777	0.353				
Nov-02	20	243,590	12,179	23.223	0.446				
Dec-02	21	212,838	10,135	23.039	-0.184				
Jan-03	21	201,839	9,611	22.986	-0.053				
Feb-03	19	144,642	7,613	22.753	-0.233				
Mar-03	21	444,331	21,159	23.775	1.022				
Apr-03	21	142,373	6,780	22.637	-1.138				
May-03	21	328,792	15,657	23.474	0.837				
Jun-03	21	281,580	13,409	23.319	-0.155				
Jul-03	22	304,383	13,836	23.351	0.031				
Aug-03	21	328,351	15,636	23.473	0.122				
Sep-03	21	459,563	21,884	23.809	0.336				

Oct-03	23	285,039	12,393	23.240	-0.569				
Nov-03	19	257,779	13,567	23.331	0.091				
Dec-03	22	244,998	11,136	23.133	-0.197				
Jan-04	20	369,784	18,489	23.640	0.507				
Feb-04	19	221,517	11,659	23.179	-0.461				
Mar-04	23	448,543	19,502	23.694	0.514				
Apr-04	21	260,029	12,382	23.240	-0.454				
May-04	20	227,239	11,362	23.154	-0.086				
Jun-04	21	370,668	17,651	23.594	0.441				
Jul-04	21	305,519	14,549	23.401	-0.193				
Aug-04	22	179,688	8,168	22.823	-0.577				
Sep-04	21	357,007	17,000	23.556	0.733				
Oct-04	21	254,489	12,119	23.218	-0.338				
Nov-04	21	363,406	17,305	23.574	0.356				
Dec-04	22	570,918	25,951	23.979	0.405				
Jan-05	20	375,484	18,774	23.656	-0.324				
Feb-05	19	338,922	17,838	23.605	-0.051				
Mar-05	22	590,862	26,857	24.014	0.409				
Apr-05	21	282,018	13,429	23.321	-0.693				
May-05	21	323,652	15,412	23.458	0.138				
Jun-05	22	517,022	23,501	23.880	0.422				
Jul-05	20	457,487	22,874	23.853	-0.027				
Aug-05	23	605,534	26,328	23.994	0.141				
Sep-05	21	312,281	14,871	23.423	-0.571				
Oct-05	21	258,956	12,331	23.235	-0.187				
Nov-05	21	192,736	9,178	22.940	-0.295				
Dec-05	21	308,134	14,673	23.409	0.469				
Jan-06	20	526,550	26,328	23.994	0.585				
Feb-06	19	301,446	15,866	23.487	-0.506				
Mar-06	23	1,211,344	52,667	24.687	1.200				
Apr-06	19	407,345	21,439	23.788	-0.899				
May-06	22	260,121	11,824	23.193	-0.595				
Jun-06	22	375,296	17,059	23.560	0.367				
Jul-06	20	232,654	11,633	23.177	-0.383				

Aug-06	23	310,050	13,480	23.325	0.147				
Sep-06	20	236,782	11,839	23.195	-0.130				
Oct-06	22	213,342	9,697	22.995	-0.200				
Nov-06	21	292,456	13,926	23.357	0.362				
Dec-06	20	349,512	17,476	23.584	0.227				
Jan-07	20	372,740	18,637	23.648	0.064				
Feb-07	19	278,753	14,671	23.409	-0.239				
Mar-07	22	862,786	39,218	24.392	0.983				
Apr-07	20	562,103	28,105	24.059	-0.333				
May-07	22	470,843	21,402	23.787	-0.272				
Jun-07	21	586,822	27,944	24.053	0.267				
Jul-07	21	326,612	15,553	23.468	-0.586				
Aug-07	23	369,172	16,051	23.499	0.032				
Sep-07	19	241,059	12,687	23.264	-0.235				
Oct-07	23	239,652	10,420	23.067	-0.197				
Nov-07	21	458,654	21,841	23.807	0.740				
Dec-07	20	410,200	20,510	23.744	-0.063				
Jan-08	21	354,433	16,878	23.549	-0.195				
Feb-08	20	263,410	13,171	23.301	-0.248				
Mar-08	20	596,923	29,846	24.119	0.818				
Apr-08	22	292,534	13,297	23.311	-0.809				
May-08	21	456,077	21,718	23.801	0.491				
Jun-08	21	461,087	21,957	23.812	0.011				
Jul-08	22	232,896	10,586	23.083	-0.730				
Aug-08	21	395,440	18,830	23.659	0.576				
Sep-08	21	177,636	8,459	22.858	-0.800				
Oct-08	23	360,494	15,674	23.475	0.617				
Nov-08	19	288,911	15,206	23.445	-0.030				
Dec-08	22	319,584	14,527	23.399	-0.046				
Jan-09	20	375,065	18,753	23.655	0.255				
Feb-09	19	249,666	13,140	23.299	-0.356				
Mar-09	22	739,931	33,633	24.239	0.940				
Apr-09	21	235,914	11,234	23.142	-1.097				
May-09	20	329,522	16,476	23.525	0.383				

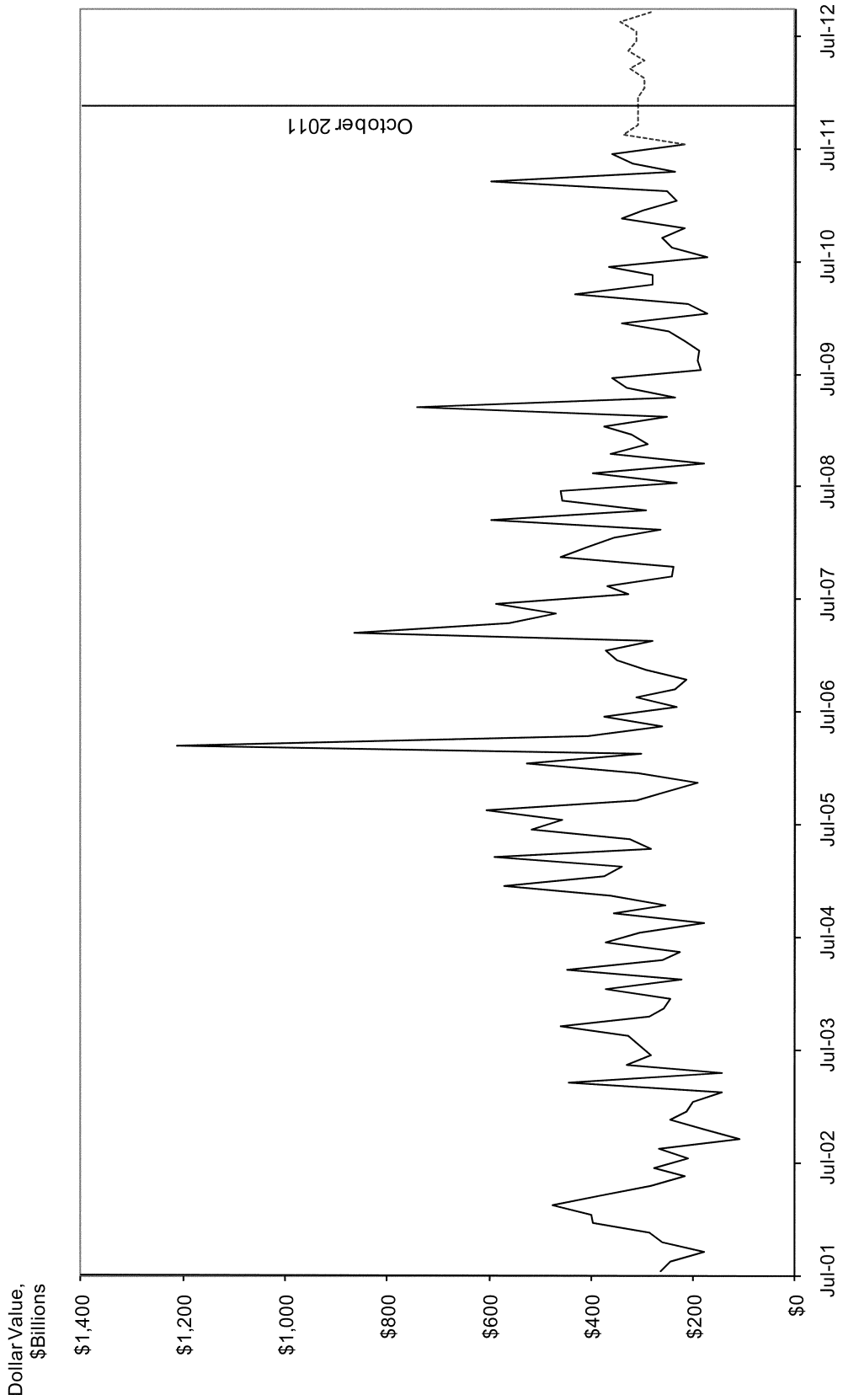
Jun-09	22	357,524	16,251	23.511	-0.014				
Jul-09	22	185,187	8,418	22.854	-0.658				
Aug-09	21	192,726	9,177	22.940	0.086				
Sep-09	21	189,224	9,011	22.922	-0.018				
Oct-09	22	215,720	9,805	23.006	0.085				
Nov-09	20	248,353	12,418	23.242	0.236				
Dec-09	22	340,464	15,476	23.463	0.220				
Jan-10	19	173,235	9,118	22.933	-0.529				
Feb-10	19	209,963	11,051	23.126	0.192				
Mar-10	23	432,934	18,823	23.658	0.533				
Apr-10	21	280,188	13,342	23.314	-0.344				
May-10	20	278,611	13,931	23.357	0.043				
Jun-10	22	364,251	16,557	23.530	0.173				
Jul-10	21	171,191	8,152	22.822	-0.709				
Aug-10	22	240,793	10,945	23.116	0.295				
Sep-10	21	260,783	12,418	23.242	0.126				
Oct-10	21	214,988	10,238	23.049	-0.193				
Nov-10	21	340,112	16,196	23.508	0.459				
Dec-10	22	297,992	13,545	23.329	-0.179				
Jan-11	20	233,668	11,683	23.181	-0.148				
Feb-11	19	252,785	13,304	23.311	0.130				
Mar-11	23	595,198	25,878	23.977	0.665				
Apr-11	20	236,355	11,818	23.193	-0.784				
May-11	21	319,053	15,193	23.444	0.251				
Jun-11	22	359,727	16,351	23.518	0.073				
Jul-11	20	215,391	10,770	23.100	-0.418				
Aug-11	23					23.338	0.364	14,603	335,859
Sep-11	21					23.339	0.367	14,625	307,130
Oct-11	21					23.339	0.370	14,648	307,608
Nov-11	21					23.340	0.373	14,671	308,086
Dec-11	21					23.340	0.376	14,694	308,565
Jan-12	20					23.341	0.378	14,716	294,328
Feb-12	20					23.341	0.381	14,739	294,785
Mar-12	22					23.342	0.384	14,762	324,768

Apr-12	20					23.342	0.386	14,785	295,702
May-12	22					23.343	0.389	14,808	325,778
Jun-12	21					23.343	0.392	14,831	311,453
Jul-12	21					23.344	0.394	14,854	311,938
Aug-12	23					23.344	0.397	14,877	342,177
Sep-12	19					23.345	0.400	14,900	283,107

Figure A

Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)

(Dashed Line Indicates Forecast Values)



[FR Doc. 2011–22652 Filed 9–2–11; 8:45 am]
BILLING CODE 8011–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65225; File No. SR–BATS–2011–018]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change To Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange

August 30, 2011.

I. Introduction

On May 12, 2011, BATS Exchange, Inc. (''BATS'' or ''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 adopt rules for the qualification, listing, and delisting of companies on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 1, 2011.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes rules to adopt a program for the qualification, listing, and delisting of companies on the Exchange (''Listing Rules'').[4] The Exchange proposes to eliminate its current rules related to securities traded on the Exchange pursuant to unlisted trading privileges, and to replace such rules with the Listing Rules, which the Exchange notes are primarily based on and substantially similar to the rules of The NASDAQ Stock Market LLC (''NASDAQ'').[5] The Exchange proposes to adopt two distinct tiers of securities to be listed on the Exchange: Tier I and Tier II. The Exchange represents that the proposed standards for a security's initial and continued listing on Tier I are nearly identical to the existing standards applicable to listing on The Nasdaq Global Market (''NGM''), and that the proposed standards for a security's initial and continued listing on Tier II are nearly identical to the existing standards applicable to listing on The Nasdaq Capital Market (''NCM'').[6] While the quantitative standards for Tier I and II differ, the Exchange notes that the qualitative standards for both tiers are the same and are nearly identical to NGM's existing qualitative standards.[7]

A. General Regulatory Authority of the Exchange

The Exchange proposes to have general, broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange notes that it may use such discretion to deny initial listing, to apply additional or more stringent standards for the initial or continued listing of particular securities, or to suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated standards for initial or continued listing.[8]

The Exchange also proposes guidance regarding the circumstances in which it would invoke discretionary authority and the types of factors it would consider when making determinations pursuant to such authority. In addition, the Exchange proposes guidance on its use of discretionary authority as it relates to a Company[9] whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified Companies within a specific period of time. The Exchange would permit the listing of such a Company if the Company were to meet all applicable initial listing standards, as well as the factors considered pursuant to its discretionary authority. The Exchange further proposes guidance on the use of its discretionary authority when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws.

B. General Procedures and Prerequisites for Listing

The Exchange proposes an application process that a Company must complete in order to be listed on the Exchange. To apply for listing on the Exchange, a Company would have to execute a Listing Agreement and a Listing Application on forms made available by the Exchange in order to provide the information required by Section 12(b) of the Act.[10] A Company's qualifications would be determined on the basis of financial statements that are either: (1) Prepared in accordance with U.S. generally accepted accounting principles; (2) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (3) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

The Exchange also proposes prerequisites for an applicant Company to become listed on the Exchange: (1) The security would have to be registered pursuant to Section 12(b) of the Act[11] or subject to an applicable exemption; (2) the Company would have to be audited by a registered independent public accountant; (3) the securities would have to be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act,[12] subject to certain exceptions; (4) the Company would have to pay the Exchange's listing fees; (5) the securities would have to be in good standing with the Commission or Other Regulatory Authority;[13] (6) the Exchange would have to certify to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64546 (May 25, 2011), 76 FR 31660 (June 1, 2011) (''Notice'').

[4] The Listing Rules are comprised of definitions, the Exchange's general regulatory authority, the procedures and prerequisites for gaining a listing on the Exchange, the listing standards for units, the disclosure obligations of listed companies, Direct Registration Program requirements, the quantitative listing requirements and standards for listing on the Exchange in Tiers I and II, the corporate governance standards applicable to all listed companies; special listing standards for securities other than common or preferred stock and warrants; the consequences of a failure to meet the Exchange's listing standards; and the Exchange's listing fees.

[5] *See* Notice, *supra* note 3, 76 FR at 31661. The Exchange is not proposing any changes to the rules of the Exchange's options market. *Id.*

[6] The Notice identifies to which market's quantitative standards (either NGM or NCM) and the NASDAQ rules the proposed BATS standards are comparable. *Id.* The Exchange is not proposing to adopt a tier equivalent to the NASDAQ Global Select Market. *Id.*

[7] *Id.*

[8] *Id.*

[9] For purposes of the Listing Rules, a ''Company'' would be any issuer of a security listed or applying to list on the Exchange, including an issuer that is not incorporated (*e.g.,* a limited partnership).

[10] 15 U.S.C. 78l(b).

[11] *Id.*

[12] 15 U.S.C. 78q–1. '' 'Direct Registration Program' means any program by a Company, directly or through its transfer agent, whereby a shareholder may have securities registered in the shareholder's name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.'' Proposed BATS Rule 14.1(a)(6).

[13] *See* proposed BATS Rule 14.1(t).

Commission, and the securities would have to become effective, pursuant to Section 12(d) of the Act;[14] and (7) the securities would have to be depositary eligible pursuant to the rules and procedures of a securities depository registered as a clearing agency under Section 17A of the Act.[15]

The Exchange proposes to permit Companies, which have securities listed on another national securities exchange, to apply to list those securities on the Exchange. The Exchange represents that this would foster competition among markets and further the development of the national market system.[16] The Exchange would make an independent determination of whether such Companies satisfy all applicable listing standards and would require Companies to enter into a dual listing agreement with the Exchange.

While the Exchange would certify such dually listed securities for listing on the Exchange, it would not exercise its authority separately to designate or register such dually listed securities as national market system securities within the meaning of Section 11A of the Act or the rules thereunder. As a result, these securities, which already would be designated as national market system securities under the Consolidated Quotation Service (''CQS'') and Consolidated Tape Association national market system plans (''CQ and CTA Plans'') or the Nasdaq Unlisted Trading Privileges national market system plan (''UTP Plan''), as applicable, would remain subject to those plans. For purposes of the national market system, such securities would continue to trade under their current ticker symbols. The Exchange would continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan or UTP Plan, as applicable.

C. Disclosure Obligations

The Exchange proposes requirements for Companies to provide information to the Exchange, to file financial reports and other documentation required pursuant to the Securities Act of 1933 and the rules and regulations thereunder, and to make public disclosures, including disclosures required pursuant to Regulation FD.[17] Such requirements would include providing the Exchange's Surveillance Department with notification prior to public release of material information. The Exchange also proposes obligations regarding notification to the Exchange of administrative matters and corporate actions. The Exchange proposes additional guidance to Companies on the importance of them providing prompt and complete notifications. The Exchange represents that such notice is critical to the proper functioning of the capital markets and to investor confidence.[18]

D. Quantitative Listing Requirements and Standards for Tier I Securities[19]

1. Primary Equity Securities—Initial Listing Requirements and Standards

The Exchange proposes to adopt quantitative initial listing requirements pertaining to the public float, distribution of shares, and trading volume of the security. Specifically, a Company would have to have a minimum bid price of $4 per share, a minimum of 1.1 million publicly held shares, and a minimum of 400 round lot holders.

The Exchange also proposes to require that the issuer of the security meet at least one of the following standards—income, equity, market value, or total assets/total revenue. The income standard would require that an issuer have annual pre-tax income from continuing operations of at least $1 million in the most recently completed fiscal year or in two of the three most recently completed fiscal years, $15 million in stockholders' equity, a market value of publicly held shares of at least $8 million, and at least three registered and active Market Makers.[20] The equity standard would require that an issuer have stockholders' equity of at least $30 million, a two-year operating history, a market value of publicly held shares of at least $18 million, and at least three registered and active Market Makers. The market value standard for currently publicly traded Companies would require a market value of listed securities of at least $75 million, a market value of publicly held shares of at least $20 million, and at least four registered and active Market Makers. Finally, the total assets/total revenue standard would require that total assets and total revenue for the most recent fiscal year and two of the three most recently completed fiscal years be at least $75 million, that the market value of publicly held shares be at least $20 million, and that the issuer have at least four registered and active Market Makers.

2. Rights and Warrants, and Preferred Stock and Secondary Classes of Common Stock—Initial Listing Requirements

For initial listing, the Exchange proposes to require that at least 450,000 rights or warrants be issued, and that the underlying security be listed on the Exchange or be a covered security, and that the issuer have at least three registered and active Market Makers. For warrants, the Exchange would also require that there be at least 400 round lot holders. When the primary equity security of an issuer is listed on the Exchange as a Tier I security or is a covered security, the Exchange would require that the preferred stock or secondary classes of common stock meet similar requirements. Specifically, the Exchange would require that there be at least 200,000 publicly held shares with a market value of at least $4 million, a minimum bid price of $4 per share, at least 100 round lot holders, and at least three registered and active Market Makers. When the primary equity security of an issuer is not listed on the Exchange as a Tier I security or is not a covered security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier I security so long as the security has met the initial listing requirements and standards for primary equity securities on Tier I.

3. Units—Initial Listing and Maintenance Requirements

The Exchange proposes that all units must have at least one equity component, and that all components of such units must satisfy the requirements for initial and continued listing as Tier I securities, except for debt components.[21] All components of a unit

[14] 15 U.S.C. 78l(d).

[15] 15 U.S.C. 78q–1.

[16] *See* Notice, *supra* note 3, 76 FR at 31662.

[17] 17 CFR 243.100 *et seq.*

[18] *See* Notice, *supra* note 3, 76 FR at 31662.

[19] The Exchange proposes to divide the quantitative listing standards into two subcategories in the Listing Rules: listing requirements and listing standards. Listing requirements would be quantitative metrics, all of which a Company would have to meet for initial or continued listing on a particular tier. Listing standards would consist of bundles of quantitative metrics; however, unlike listing requirements, a Company only would have to meet at least one listing standard to become listed or to continue listing.

[20] ''Market Maker'' means a member of the Exchange that acts as a market maker on the Exchange. *See* BATS Rules Chapter XI.

[21] The Exchange proposes that all debt components of a unit, if any, must meet the following requirements: (1) The debt issue must have an aggregate market value or principal amount of at least $5 million; (2) the issuer of the debt security must have equity securities listed on the Exchange as a Tier I security; and (3) in the case of convertible debt, the equity into which the debt is convertible must itself be subject to real-time last sale reporting in the United States, and the convertible debt must not contain a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes

Continued

would have to be issued by the same issuer, and all units and issuers of such units would have to comply with the initial and continued listing requirements of Tier I. For initial listing, a unit would have to have at least three registered and active Market Makers, and, for continued listing, a unit would have to have at least two registered and active Market Makers, one of which could be a Market Maker entering a stabilizing bid.

4. Primary Equity Securities—Maintenance Requirements and Standards

For continued approval of a primary equity security listing, the Exchange proposes to require that there be a minimum bid price of $1 per share and at least 400 total holders. The Exchange would also require that issuers meet at least one of the following standards—equity, market value, or total assets/total revenue. The equity standard would require that stockholders' equity be at least $10 million, that there be at least 750,000 publicly held shares with a market value of at least $5 million, and that there be at least two registered and active Market Makers. The market value standard would require that the market value of listed securities be at least $50 million, that there be at least 1.1 million publicly held shares with a market value of at least $15 million, and that there be at least two registered and active Market Makers. The total assets/total revenue standards would require that there be total assets and total revenue of at least $50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years, at least 1.1 million publicly held shares with a market value of at least $15 million, and at least four registered and active Market Makers.

5. Rights and Warrants, Preferred Stock and Secondary Classes of Common Stock—Maintenance Requirements and Standards

For continued listing, the Exchange proposes to require that the rights or warrants continue to be listed on the Exchange as a Tier I security or be a covered security, and that there be at least two registered and active Market Makers, one of which could be a Market Maker entering a stabilizing bid. For preferred stock and secondary classes of common stock, the Exchange also proposes that a Company's primary equity security be listed on the Exchange as a Tier I security or as a covered security. The Exchange further proposes that the preferred stock or secondary class of common stock have at least 100,000 publicly held shares with a market value of at least $1 million, a minimum bid price of $1 per share, at least 100 public holders, and at least two registered and active Market Makers. When a Company's primary equity security is not listed on the Exchange as a Tier I security or is not a covered security, the Exchange proposes that the preferred stock and/or secondary class of common stock may continue to be listed on the Exchange as a Tier I security so long as the security has met the continued listing criteria for primary equity securities.

E. Quantitative Listing Requirements and Standards for Tier II Securities [22]

1. Primary Equity Securities—Initial Listing Requirements and Standards

The Exchange proposes to adopt quantitative initial listing requirements pertaining to the public float, distribution of shares, and trading volume of a security. Specifically, the Exchange would require a Company to have a minimum bid price of $4 per share, a minimum of one million publicly held shares, at least 300 round lot holders, and at least three registered and active Market Makers.[23]

The Exchange would also require that the issuer of the security meets at least one of the following standards—equity, market value, or net income. The equity standard would require stockholders' equity of at least $5 million, a market value of publicly held shares of at least $15 million, and a two-year operating history. The market value standard would require a market value of listed securities of at least $50 million, stockholders' equity of at least $4 million, and a market value of publicly held shares of at least $15 million. The net income standard would require net income from continuing operations of at least $750,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years, stockholders' equity of at least $4 million, and a market value of publicly held shares of at least $5 million.

2. Preferred Stock and Secondary Classes of Common Stock; Rights, Warrants, and Convertible Debt—Initial Listing Requirements

When the primary equity security of an issuer is listed on the Exchange as a Tier II security or is a covered security, the Exchange proposes to require that the preferred stock or secondary classes of common stock have at least 200,000 publicly held shares with a market value of at least $3.5 million, a minimum bid price of $4 per share, at least 100 round lot holders, and at least three registered and active Market Makers. When a company's primary equity security is not listed on the Exchange as a Tier II security or is not a covered security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier II security so long as the security has met the initial listing requirements and standards for primary equity securities on Tier II.

For initial listing of rights, warrants, and put warrants, the Exchange also proposes to require that at least 400,000 are issued and that the underlying security is listed on the Exchange or is a covered security. For warrants, the Exchange further proposes to require that there be at least 400 round lot holders, and at least three registered and active Market Makers.

For initial listing of convertible debt securities, the Exchange would require that the principal amount outstanding be at least $10 million, that the current last sale information be available in the United States with respect to the underlying security into which the bond or debenture is convertible, and that the security have at least three registered and active Market Makers. In addition to these conditions, the Exchange proposes to require that issuers also meet one of the following conditions: (1) That the issuer of the debt has an equity security that is listed on the Exchange, NASDAQ, NYSE Amex LLC (''NYSE Amex''), or the New York Stock Exchange (''NYSE''); (2) that an issuer whose equity security is listed on the Exchange, NASDAQ, NYSE Amex, or NYSE directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security; (3) a nationally recognized securities rating organization (an ''NRSRO'') has assigned a current rating to the debt security that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another NRSRO; or (4) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (a) an investment grade rating to an immediately senior issue; or (b) a rating that is no lower than an S&P Corporation ''B'' rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

For initial listing of index warrants, the Exchange would require that the

a minimum period of ten business days within which such price reduction will be in effect.

[22] *See supra* note 19.

[23] For American Depository Receipts, the Exchange would also require there be at least 400,000 issued.

minimum public distribution be at least one million warrants, that there be a minimum of 400 public holders, that the market value of the index warrants be at least $4 million, and that the issuer have a minimum tangible net worth in excess of $150 million.

3. Units—Initial Listing and Maintenance Requirements

The Exchange proposes that all component parts of units must meet the Tier II requirements for initial and continued listing. Further, the minimum period for listing of the units would be 30 days from the first day of listing, except the period could be shortened if the units are suspended or withdrawn for regulatory purposes. Companies and underwriters seeking to withdraw units from listing would have to provide the Exchange with notice of such intent at least 15 days prior to withdrawal. For initial listing, a unit would have to have at least three registered and active Market Makers, and, for continued listing, a unit would have to have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

4. Primary Equity Securities—Maintenance Requirements and Standards

For continued approval of a primary equity security listing, the Exchange proposes to require a minimum bid price of $1 per share, at least 300 public holders, at least 500,000 publicly held shares with a market value of at least $1 million, and at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

Additionally, the Exchange proposes to require that issuers meet at least one of the following standards—equity, market value, or net income. The equity standard would require that stockholders' equity be at least $2.5 million. The market value standard would require that the market value of listed securities be at least $35 million. The net income standard would require net income from continuing operations of $500,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

5. Preferred Stock and Secondary Classes of Common Stock; Rights, Warrants, and Convertible Debt—Maintenance Requirements

When the primary equity security is listed on the Exchange as a Tier II security or is a covered security, the Exchange proposes that a Company's preferred stock or secondary class of common stock have a minimum bid price of $1 per share, at least 100 public holders, at least 100,000 publicly held shares, a market value of publicly held shares of at least $1 million, and at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid. When a Company's primary equity security is not listed on the Exchange as a Tier II security or is not a covered security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier II security so long as the security has met the criteria of the continued listing of primary equity securities on Tier II.

For rights, warrants, and put warrants (*i.e.,* instruments that grant the holder the right to sell to the issuing Company a specified number of shares of the Company's common stock, at a specified price until a specified period of time), the Exchange proposes that the underlying security remain listed on the Exchange or be a covered security, and that there be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

For continued listing of convertible debt securities, the Exchange proposes to require a principal amount outstanding of at least $5 million, at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid, and current last sale information available in the United States with respect to the underlying security into which the bond or debenture is convertible.

F. Corporate Governance Standards

As noted by the Exchange, in addition to having quantitative listing standards based on the standards applicable to NASDAQ-listed Companies, particularly those designated as NGM or NCM securities, the Exchange proposes nearly identical qualitative standards to those of NGM for both tiers of the Exchange.[24] Specifically, the Exchange proposes to adopt corporate governance standards relating to a Company's board of directors, audit committee requirements, independent director oversight of executive compensation, a mandatory code of conduct, shareholder meetings (including proxy solicitation and quorum), review of related party transactions, and shareholder approval (including voting rights). The Exchange believes that preliminarily adopting uniform corporate governance standards to those of NASDAQ would assist issuers and their advisors in determining the Exchange's requirements.[25]

G. Listing Standards for Other Securities

The Exchange proposes listing standards applicable to ''other securities,'' including exchange traded funds, index-linked securities, selected equity-linked debt securities, trust issued receipts, and index warrants. The Exchange notes that the proposed standards for these securities are both similar to the Exchange's current standards applicable to securities traded on the Exchange pursuant to unlisted trading privileges, as well as NASDAQ's standards.[26]

H. Failure to Meet Listing Standards

The Exchange proposes that securities of a Company that do not meet the listing standards set forth in the Listing Rules are subject to delisting from, or denial of initial listing on, the Exchange. Accordingly, the Exchange proposes procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more requirements or standards for initial or continued listing, and thus are deficient with respect to the listing standards.

The Listings Qualifications Department would be responsible for identifying deficiencies that could lead to delisting or denial of a listing application, notifying the Company of the deficiency or denial, and issuing Staff Delisting Determinations and Public Reprimand Letters. The Exchange also proposes various responsibilities when a Company receives notice of a deficiency, including public notification responsibilities.

The Hearings Panel, upon timely request by a Company, would review a staff delisting determination, denial of a listing application, or public reprimand letter at an oral or written hearing, and issue a decision that could, among other things, grant an exception to the Exchange's listing standards or affirm a delisting. The Exchange Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, could review the decisions of the Hearings Panel. Finally, the Exchange Board of Directors could exercise discretion to review a Listing Council decision.

The Exchange also proposes procedures related to Commission notification of the Exchange's final delisting determinations, rules applicable to adjudicators and advisors,

[24] *See* Notice, *supra* note 3, 76 FR at 31665.

[25] *Id.*

[26] *Id.*

and general information relating to the adjudicatory process.

A Company's failure to maintain compliance with the applicable provisions of the Listing Rules would result in the termination of the listing unless an exception is granted to the Company. The termination of the Company's listing would become effective in accordance with the procedures set forth in the Listing Rules.

I. Listing Fees

The Exchange proposes to commence its listings business by charging entry fees of $100,000 and $50,000 for Companies listed on Tiers I and II, respectively. The initial primary listing fee for both tiers would include a $25,000 non-refundable application fee. The Exchange also proposes to charge annual fees of $35,000 and $20,000 for Companies listed on Tiers I and II, respectively, on a prorated basis.

The Exchange proposes to waive the entry fee for any Company that is listed on another national securities exchange if such Company transfers its listing to the Exchange, is dually-listed on the Exchange and another national securities exchange but ceases to maintain its listing on that other national securities exchange, or is listed on another national securities exchange but not listed on the Exchange, if the issuer of such securities is acquired by an unlisted Company and, in connection with the acquisition, the unlisted Company lists exclusively on the Exchange. Annual dual listing fees would be $15,000 for both tiers and would be prorated.[27]

III. Discussion

After careful review of the proposal, 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 proposal is consistent with Section 6(b)(5) of the Act,[29] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange has proposed an extensive program for the qualification, listing, and delisting of Companies on the Exchange and has represented that its rules are nearly identical to listing rules of an existing national securities exchange. As the Commission has noted, the development and enforcement of adequate standards governing the initial listing and maintenance of listing of securities is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a marketplace to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base, and trading interest to maintain fair and orderly markets. Once an issuer has been approved for initial listing, the maintenance criteria allow a marketplace to monitor the status and trading characteristics of that issue to ensure that it continues to meet standards for market depth and liquidity.[30]

In addition to the quantitative standards, the qualitative requirements, such as audit committees, independent director oversight of executive compensation, a mandatory code of conduct, shareholder meetings (including proxy solicitation and quorum), review of related party transactions, shareholder approval (including voting rights), and disclosure policies are designed to ensure that companies trading on the Exchange will adequately protect the interests of public shareholders.[31] The Commission also notes that, because extensive listing and maintenance standards are being adopted, only companies suitable for exchange listing are eligible for trading on the Exchange.[32]

The Commission believes that inclusion of a security for listing on an exchange should not depend solely on meeting quantitative criteria, but should also entail an element of judgment given the expectations of investors and the imprimatur of listing on a particular market.[33] The Commission believes that this rule provides the necessary flexibility to determine whether to list an issuer while ensuring that certain minimum standards must be met. Thus, the Commission believes that the listing and maintenance standards strike the appropriate balance between protecting investors and providing a marketplace for issuers satisfying the disclosure requirements under the federal securities laws. The standards will provide important guidance on the Exchange review process, and will alert issuers seeking to list on the Exchange of its specific standards.

The Commission also believes the proposal is consistent with Section 6(b)(9) of the Act[34] because the rules will prohibit the listing of any security issued in a limited partnership rollup transaction (as defined in Section 14(h) of the Act), unless such transaction satisfies the criteria of Section 6(b)(9) and a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

Finally, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[35] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers, and other persons using its facilities. Specifically, as proposed, the Exchange will establish a pricing structure that is not variable based on the number of shares or other metrics. The fees are designed to be equitable in that they will be the same amongst issuers seeking to list Tier I securities and the same amongst issuers seeking to list Tier II securities. Further, the Commission notes the Exchange will not charge additional fees that issuers incur at other exchanges, including fees for issuance of additional shares, name changes, and other corporate actions. Finally, the Commission also notes that the Exchange's pricing, in general, will be roughly equivalent to or less than what issuers would pay at other national securities exchanges,[36] and

[27] The Exchange does not propose to charge for ministerial changes implemented by a Company (*e.g.*, name changes and symbol changes), nor does the Exchange propose to charge a fee for necessary work related to corporate actions of a Company (*e.g.*, a reverse stock split, re-incorporation, *etc.*).

[28] In approving this proposed rule change, 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* Securities Exchange Act Release No. 55642 (April 18, 2007), 72 FR 20395 (April 24, 2007) (granting accelerated approval to certain NCM listing standards); Securities Exchange Act Release No. 37481 (July 25, 1996), 61 FR 40270, 40273–74 (August 1, 1996) (granting accelerated approval to establish new quantitative and qualitative listing standards of Chicago Stock Exchange, Incorporated (''Chx'')) (''Chx Listing Standards Approval''); Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998, 39002 (August 1, 1994) (granting accelerated approval to new quantitative and qualitative listing standards of Pacific Stock Exchange, Inc. (''PSE'')) (''PSE Listing Standards Approval'').

[31] *Id.*

[32] *Id.*

[33] *See* Chx Listing Standards Approval, *supra* note 30, 61 FR at 40274; PSE Listing Standards Approval Order, *supra* note 30, 59 FR at 39002.

[34] 15 U.S.C. 78f(b)(9).

[35] 15 U.S.C. 78f(b)(4).

[36] For instance, issuers listing on NGM pay between $125,000 and $225,000 initially (depending on the number of shares) and between $35,000 and $99,500 annually, compared to proposed Tier I fees of $100,000 initially and $35,000 annually. *See* NASDAQ Rule 5910(a) and (c). Similarly, issuers listing on NCM pay either $50,000 or $75,000 initially (depending on the number of shares) and between $17,500 and $75,000 annually, compared to proposed Tier II fees of $50,000 initially and $20,000 annually. *See* NASDAQ Rule 5920(a) and (c).

will not include multiple other fees applicable on other national securities exchanges to additional shares issued by listed companies, corporate actions, and related activities of issuers.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–BATS–2011–0118) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22627 Filed 9–2–11; 8:45 am]

BILLING CODE 8011–01–P

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12744 and #12745]

Nebraska Disaster Number NE–00044

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4014–DR), dated 08/12/2011 .

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 06/19/2011 through 06/21/2011.

Effective Date: 08/25/2011.

Physical Loan Application Deadline Date: 10/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated 08/12/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Dundy, Logan.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–22647 Filed 9–2–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12758 and #12759]

New York Disaster #NY–00104

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 08/26/2011.

Incident: Severe storms and flooding.

Incident Period: 04/26/2011 through 05/30/2011.

Effective Date: 08/26/2011.

Physical Loan Application Deadline Date: 10/25/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/26/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clinton, Franklin, Oneida, Warren.

Contiguous Counties:

New York: Essex, Hamilton, Herkimer, Lewis, Madison, Oswego, Otsego, Saint Lawrence, Saratoga, Washington.

Vermont: Chittenden, Grand Isle.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12758B and for economic injury is 127590.

The States which received an EIDL Declaration # are: New York, Vermont.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 26, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–22648 Filed 9–2–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12764 and #12765]

Michigan Disaster #MI–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Michigan dated 08/29/2011.

Incident: Heavy Rain and Flooding.

Incident Period: 07/28/2011 through 07/29/2011.

Effective Date: 08/29/2011.

Physical Loan Application Deadline Date: 10/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/29/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Ingham.
Contiguous Counties:
Michigan: Clinton, Eaton, Jackson, Livingston, Shiawassee.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12764 6 and for economic injury is 12765 0.

The States which received an EIDL Declaration # are: Michigan.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 29, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–22654 Filed 9–2–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12766 and #12767]

Illinois Disaster #IL–00032

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ILLINOIS dated 08/29/2011.

Incident: Severe Storms and Flooding.

Incident Period: 07/27/2011 through 07/28/2011.

Effective Date: 08/29/2011.

Physical Loan Application Deadline Date: 10/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/29/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jo Daviess, Stephenson.
Contiguous Counties:
Illinois: Carroll, Ogle, Winnebago.
Iowa: Dubuque, Jackson.
Wisconsin: Grant, Green, Lafayette.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12766 6 and for economic injury is 12767 0.

The States which received an EIDL Declaration # are, Illinois, Iowa, Wisconsin.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 29, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–22655 Filed 9–2–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12770 and #12771]

Puerto Rico Disaster #PR–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 and continuing.

Effective Date: 08/27/2011.

Physical Loan Application Deadline Date: 10/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/27/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities: Aguas Buenas, Carolina, Cayey, Ceiba, Comerio, Juncos, Las Marias, Luquillo, Morovis, Naguabo Orocovis Utuado Vega Baja Villalba.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127708 and for economic injury is 127718

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–22657 Filed 9–2–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12768 and #12769]

Puerto Rico Disaster #PR–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 and continuing.

Effective Date: 08/27/2011.

Physical Loan Application Deadline Date: 10/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/27/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities (Physical Damage and Economic Injury Loans):

Caguas, Canovanas, Carolina, Cayey, Loiza, Luquillo, San Juan.

Contiguous Municipalities (Economic Injury Loans Only):

Puerto Rico: Aguas Buenas, Aibonito, Catano, Ceiba, Cidra, Fajardo, Guayama, Guaynabo, Gurabo, Juncos, Las Piedras, Patillas, Rio Grande, Salinas, San Lorenzo, Trujillo Alto.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127688 and for economic injury is 127690.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–22656 Filed 9–2–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12762 and # 12763]

Louisiana Disaster # LA–00039

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 08/29/2011.

Incident: Flooding.

Incident Period: 04/25/2011 through 07/07/2011.

Effective Date: 08/29/2011.

Physical Loan Application Deadline Date: 10/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/29/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parish: Concordia.

Contiguous Parishes/Counties:

Louisiana: Avoyelles, Catahoula, Pointe Coupee, Tensas, West Feliciana.

Mississippi: Adams, Wilkinson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12762 6 and for economic injury is 12763 0.

The States which received an EIDL Declaration # are: Louisiana, Mississippi.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: August 26, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–22650 Filed 9–2–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7576]

Final Environmental Impact Statement for the Proposed Keystone XL Project

AGENCY: Department of State.

ACTION: Notice of availability of the final environmental impact statement for the proposed Keystone XL Project.

SUMMARY: Consistent with the National Environmental Policy Act (NEPA) of 1969, as amended, the staff of the U.S. Department of State (DOS) prepared a final environmental impact statement (final EIS) for the proposed Keystone XL Project (Project). On September 19, 2008, the applicant, TransCanada Keystone Pipeline, LP (TransCanada) filed an application for a Presidential Permit for the construction, operation, and maintenance of pipeline facilities at the border of the U.S. and Canada for the transport of crude oil across the U.S./Canada international boundary.

TransCanada has requested authorization to construct and operate border crossing facilities at the U.S./Canadian border in Phillips County, near Morgan, Montana, in connection with the proposed Project that is designed to transport crude oil produced from oil sands in the Western Canadian Sedimentary Basin (WCSB) and other sources to a proposed oil storage facility in Cushing, Oklahoma, and to a delivery points near Nederland and Moore Junction, Texas.

The Secretary of State is designated and empowered to receive all applications for Presidential permits, as referred to in Executive Order 13337, as amended, for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country. As a part of the review of the application for Presidential Permits, the Secretary of State must determinate whether or not the projects would be in the national interest. The determination of national interest involves consideration of many factors, including energy security; environmental, cultural, and economic impacts. Before making a decision on the proposed Project, DOS will consult with the eight federal agencies identified in Executive Order 13337: The Departments of Energy, Defense, Transportation, Homeland Security, Justice, Interior, and Commerce, and the Environmental Protection Agency. DOS will also solicit public input on the national interest determination by accepting written comments and holding comment meetings in the six states traversed by the proposed route and a final meeting in Washington, DC.

SUPPLEMENTARY INFORMATION: The final EIS was prepared consistent with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations implementing NEPA (40 CFR 1500), and the DOS regulations for implementing NEPA (22 CFR 161). The final EIS includes an appendix that was prepared consistent with the requirements of the Montana Environmental Policy Act (MEPA) and the Montana Major Facility Siting Act (MFSA). The final EIS describes the proposed Project; the purpose of and need for the proposed Project; alternatives to the proposed Project, including the No Action Alternative, system alternatives, alternative routes, alternative pipeline designs, and alternative sites for aboveground facilities; the potential impacts of the proposed Project and alternatives; cumulative impacts associated with construction and operation of the proposed Project; issues related to potential spills from the proposed Project; and the agency-preferred alternative. The final EIS addresses the potential environmental effects of the construction and operation of the portion of the proposed Keystone XL Project in the U.S., as well as connected actions to that project such as the construction of powerlines to serve pump stations on the pipeline and two projects that would provide shipping access on the pipeline to domestic crude oil producers. DOS assessed the potential impacts of the projects based on currently available information.

The Federal and State agencies that served as Cooperating Agencies in the development of the EIS consisted of the U.S. Army Corps of Engineers; the U.S. Department of Agriculture—Natural Resources Conservation Service, Farm Service Agency, and Rural Utilities Service; the U.S. Department of Energy—Office of Policy and International Affairs and Western Area Power Administration; the U.S. Department of the Interior—Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service; the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety; the U.S. Environmental Protection Agency; and the Montana Department of Environmental Quality. Cooperating agencies either have jurisdiction by law or special expertise with respect to the environmental impacts assessed in connection with the proposal and are involved in the DOS analysis of those environmental impacts. BLM's purpose and need in preparing an EIS for the proposed Project is to respond to the Keystone application under Section 28 of the Mineral Leasing Act of 1920, as amended (MLA; 30 U.S.C. 185) for a right-of-way (ROW) grant to construct, operate, maintain, and decommission a crude oil pipeline and related facilities on federal lands in compliance with the MLA, BLM ROW regulations, and other applicable federal laws. BLM will decide whether to approve, approve with modification, or deny issuance of a ROW grant to Keystone for the proposed Project, and if so, under what terms and conditions. The proposed ROW action appears consistent with approved BLM land use planning.

In total, the Keystone XL Project would consist of approximately 1,711 miles of new, 36-inch-diameter pipeline, with approximately 327 miles of pipeline in Canada and 1,384 miles in the U.S. The overall proposed Keystone XL Project is estimated to cost $7 billion. If permitted, it would begin operation in 2013, with the actual date dependent on the necessary permits, approvals, and authorizations.

The following U.S. counties could possibly be affected by construction of the proposed Project:

- *Montana:* Phillips, Valley, McCone, Dawson, Prairie, Fallon.
- *South Dakota:* Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman, Tripp.
- *Nebraska:* Keya Paha, Rock, Holt, Garfield, Wheeler, Greeley, Boone, Nance, Merrick, Hamilton, York, Fillmore, Saline, Jefferson.
- *Kansas:* Clay, Butler.
- *Oklahoma:* Atoka, Bryan, Coal, Creek, Hughes, Lincoln, Okfuskee, Payne, Seminole.
- *Texas:* Angelina, Cherokee, Delta, Fannin, Franklin, Hardin, Hopkins, Jefferson, Lamar, Liberty, Nacogdoches, Polk, Rusk, Smith, Upshur, Wood, Chambers, Harris.

Copies of the final EIS have been mailed to interested federal, state and local agencies; public interest groups; individuals and affected landowners who requested a copy of the final EIS or who provided comments during the scoping period or the public comment periods on the draft and supplemental draft EISs; libraries; newspapers; and other stakeholders.

FOR FURTHER INFORMATION CONTACT: The DOS Project Web site (*http://www.keystonepipeline-xl.state.gov*) provides Project-related information for viewing and downloading, including the Keystone application for a Presidential Permit and associated maps and drawings, supplemental information filed by Keystone, the final EIS, and a list of libraries where the final EIS may be viewed.

For information on the proposed Project or the final EIS, contact Alexander Yuan, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, or by telephone (202) 647–4284, or by fax at (202) 647–5947.

Issued in Washington, DC, on September 2, 2011.

Dated: August 30, 2011.

John E. Thompson,

Acting Director, Bureau of Oceans and International Environmental and Scientific Affairs/Office of Environmental Policy, U.S. Department of State.

[FR Doc. 2011–22689 Filed 9–2–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 7574]

Final Public Meeting in Washington, DC for the Proposed Keystone XL Project

AGENCY: Department of State.

ACTION: Notice of final public meeting in Washington, DC for the proposed Keystone XL project.

SUMMARY: Following the release of the final Environmental Impact Statement for the proposed Keystone XL pipeline, Executive Order 13337 calls on the Secretary of State, or her designee, to determine if issuance of a Presidential Permit to the applicant would serve the national interest. This decision on the application will take into account a wide range of factors, including environmental, economic, energy security, foreign policy, and pipeline safety concerns. No decision will be made until the completion of this thorough review process. The Department expects to make a decision on whether to grant or deny the Permit before the end of the year.

As part of the review and analysis of the national interest, on August 26, 2011 the U.S. Department of State announced public meetings to be held along the proposed pipeline route in the **Federal Register** on pages 53525 and 53526 (volume 76, number 166). These meetings will provide opportunities for the public to comment on the project and the comments will be considered in the final decision. In addition to these meetings along the pipeline route, a final meeting will be held in Washington, DC.

Friday, October 7, 2011

Ronald Reagan Building and International Trade Center, Atrium Hall, 1300 Pennsylvania Avenue, Washington, District of Columbia 20004; 10 a.m.–2 p.m.

Procedures for Public Meetings

Speakers: All members of the public are welcome to attend the meetings and state their comments for the administrative record. Persons who want to speak at the meeting will need to sign up in person at the entrance of the meeting venue and be given a number. The order of speakers will be determined on a first-come, first-served basis, according to the sign-up sheet. Those wishing to speak must be present when their name or number is called or they will forfeit their time.

Comments: Remarks made at the meetings will be recorded, transcribed, and entered into the administrative record for the State Department's consideration of the proposed Keystone XL pipeline. Each speaker will be allowed 3–5 minutes to make remarks, depending on the number of people who sign up to speak. Speakers will be asked to state their name and any organization with which they are affiliated.

Depending on attendance, it may not be possible for all those who sign up to have the opportunity to speak. The State Department encourages individuals who do not have the opportunity to speak or who are unable to complete their comments in the allotted time to submit comments on the national interest determination in written form. A State Department official will be available to accept written comments, and a summary of all comments will be incorporated in the record of decision for the proposed Keystone XL pipeline. The Department will also accept written comments on the national interest determination beginning on the date the final Environmental Impact Statement is issued. In order to ensure that comments are processed and considered before the decision is made on the permit application, all comments must be submitted by midnight on October 9, 2011.

Purpose: These meetings are an opportunity for the public to express views on all aspects of the proposed Keystone XL pipeline. Participants are encouraged to recount information illustrating their view about whether the issuance of a Presidential Permit for the Keystone XL pipeline project is in the U.S. national interest.

Presiding Officer: The meetings will be chaired by a senior official from the U.S. Department of State. At the beginning of the meeting, the presiding officer will explain the status of the application for the permit and the Department's process for making a decision on the Permit, but will not answer questions. The presiding officer or an assistant will announce the name of each speaker from the sign-up list.

Protocol: We ask attendees to respect the meeting procedures in order to ensure a constructive information gathering session. No signs or banners will be allowed inside the meeting venue. The presiding officer will use his/her discretion to conduct the meeting in an orderly manner.

FOR FURTHER INFORMATION CONTACT: A comprehensive description of the proposed Project and up-to-date information regarding the public meetings are available at *http://www.keystonepipeline-xl.state.gov.* The final Environmental Impact Statement, including a summary of public comments received during two prior public comment periods, will also be available online.

Comments can be submitted by the following methods: Online at *http://www.keystonepipeline-xl.state.gov;* e-mail at *keystonexl-nid@cardno.com;* fax at 206–269–0098; or mailed to the following address: Alexander Yuan, Keystone XL EIS Project, P.O. Box 96503–98500, Washington, DC 20090–6503.

As noted above, in order for comments to be considered they must be submitted by midnight on October 9, 2011.

Media Contacts: Please contact Wendy Nassmacher at 202–647–6664 or via e-mail at *NassmacherWL@state.gov.*

Dated: August 30, 2011.

Issued in Washington, DC, on September 2, 2011.

John E. Thompson,

Acting Director, Bureau of Oceans and International Environmental and Scientific Affairs/Office of Environmental Policy, U.S. Department of State.

[FR Doc. 2011–22692 Filed 9–2–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 7575]

Public Meeting in Midwest City, OK, for the Proposed Keystone XL Project; Correction

AGENCY: Department of State.

ACTION: Notice of correction for time of public meeting in Midwest City, Oklahoma for the proposed Keystone XL project.

SUMMARY: On August 26, 2011, an announcement for public meetings for the proposed Keystone XL project was published in the **Federal Register** on pages 53525 and 53526 (volume 76, number 166). The referenced notice is corrected as to the meeting times:

Friday, September 30, 2011.

Reed Center Exhibition Hall, 5800 Will Rogers Road, Midwest City, Oklahoma 73110, 4:30–10 p.m.

FOR FURTHER INFORMATION CONTACT: A comprehensive description of the proposed Project and up-to-date information regarding the public meetings are available at *http://www.keystonepipeline-xl.state.gov.* The final Environmental Impact Statement, including a summary of public comments received during two prior public comment periods, will also be available online.

Dated: August 30, 2011.

Issued in Washington, DC, on September 2, 2011.

John E. Thompson,

Acting Director, Bureau of Oceans and International Environmental and Scientific Affairs/Office of Environmental Policy, U.S. Department of State.

[FR Doc. 2011–22690 Filed 9–2–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the St. Louis Airport Authority under the provisions of 49 U.S.C. 47501 *et seq.* (formerly the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 Code of Federal Regulations (CFR) part 150 (hereinafter referred to as ''Part 150''). On April 5, 2011, the FAA determined that the noise exposure maps submitted by the St. Louis Airport Authority under Part 150 were in compliance with applicable requirements. On August 26, 2011, the FAA approved the Lambert-St. Louis International Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

DATES: *Effective Date:* The effective date of the FAA's approval of the Noise Compatibility Program for Lambert-St. Louis International Airport is August 26, 2011.

FOR FURTHER INFORMATION CONTACT: FAA, Todd Madison, ACE–611B, 901 Locust, Kansas City, Missouri, 64106–2325, *todd.madison@faa.gov*, 816–329–2640. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Lambert-St. Louis International Airport, effective August 26, 2011.

Under section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required. Prior to a FAA decision on a request to implement the action, an environmental review of the proposed action may be required. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under applicable law contained in Title 49 U.S.C. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Regional Office in Kansas City, Missouri.

The Lambert-St. Louis International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from November 29, 2010, beyond the year 2015. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 47504 of the Act. The FAA began its review of the program on April 5, 2011, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-three proposed actions for noise abatement, land use planning and program management on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and Part 150 have been satisfied. The overall program was approved by the FAA, effective August 26, 2011.

Outright approval was granted for twenty-three specific program measures. The noise compatibility program recommended ten measures for noise abatement, ten measures for land use planning policies and land use management, and three measures for oversight and implementation of the abatement and land use measures. Of the noise abatement measures, one previously approved measure was withdrawn, and nine previously approved measures will continue. Of the land use management measures, five new measures are approved, and five previously approved measures will continue. Of the program management measures, three previously approved measures will continue and were updated for the current administrative and management conditions at Lambert-St. Louis International Airport. Each measure is described in the following summary.

Noise Abatement Measure NA–1 will continue, as previously approved, the daytime use of Runway 6–24 between

the hours of 6 a.m. and 11 p.m., as needed to prevent air traffic delays.

Noise Abatement Measure NA–2 approves daytime departure corridors between the hours of 6 a.m. and 11 p.m. for commercial airline and military jets.

Noise Abatement Measure NA–3 will continue, as previously approved, to prohibit nighttime full-power aircraft engine run-ups between the hours of 11 p.m. and 6 a.m. without prior authorization from the Airport Operations/Communications Center.

Noise Abatement Measure NA–4 will continue, as previously approved, to prohibit nighttime use of Runway 6–24 between the hours of 11 p.m. and 6 a.m. by commercial airline or military jet operations except under unusual or extraordinary circumstances.

Noise Abatement Measure NA–5 approves nighttime departure corridors between the hours of 11 p.m. and 6 a.m. for commercial airline and military jets.

Noise Abatement Measure NA–6 will continue, as previously approved, the use of distant noise abatement departure procedures by commercial airline jets as outlined in FAA Advisory Circular 91–53A.

Noise Abatement Measure NA–7 will continue, as previously approved, quiet push-back procedures by commercial airline jets using aircraft tractors because power backs using aircraft engines are not permitted.

Noise Abatement Measure NA–8 will continue, as previously approved, to limit commercial jet aircraft from intercepting the final approach no closer than four (4) nautical miles from the arrival runway end.

Noise Abatement Measure NA–9 will continue, as previously approved, for the St. Louis Airport Authority to notify the airlines concerning the existing practices for full power maintenance run-ups and terminal push-backs by the air carriers with scheduled service at Lambert-St. Louis International Airport, and the St. Louis Airport Authority will also encourage the use of the distant noise abatement departure procedure.

Noise Abatement Measure NA–10 approves the withdrawal of the measure to maximize west flow operations.

Land Use Management Measure LU–5 will continue, as previously approved, the voluntary use of comprehensive planning, and the St. Louis Airport Authority will assist, as appropriate, the local jurisdictions to pursue the development and adoption of comprehensive planning policies.

Land Use Management Measure LU–6 will continue, as previously approved, the voluntary discretionary review between the St. Louis Airport Authority and local jurisdictions to ensure that optimal development can occur in a manner that is compatible with the airport and aircraft operations.

Land Use Management Measure LU–7 will continue, as previously approved, the St. Louis Airport Authority to assist local jurisdictions in the development and adoption of voluntary general purpose/compatible use zoning.

Land Use Management Measure LU–8 will continue, as previously approved, the implementation of voluntary noise overlay zoning between the St. Louis Airport Authority and local jurisdictions, as appropriate.

Land Use Management Measure LU–9 will continue, as previously approved, the adoption of voluntary building codes between the St. Louis Airport Authority and local jurisdictions for noise compatibility, as appropriate.

Land Use Management Measure LU–10 will continue, as previously approved, voluntary advanced land acquisition by the St. Louis Airport Authority working cooperatively with the local jurisdictions to identify parcels zoned residential where incompatible development is being proposed.

Land Use Management Measure LU–11 approves noise disclosure for use by the St. Louis Airport Authority to cooperatively engage in a dialogue with area realtors and local jurisdictions to jointly develop a regulatory process to provide full disclosure of airport noise.

Land Use Management Measure LU–12 approves subdivision regulations to amend, as necessary, the local subdivision regulations to ensure that land is platted and developed to minimize noise impacts or reduce noise-sensitivity of new development.

Land Use Management Measurement LU–13 approves the transfer of development rights for the local jurisdictions to encourage the use of Transfer of Development Rights (TDR) where appropriate to benefit land use compatibility.

Land Use Management Measure LU–14 approves capital improvement programming for local jurisdictions to consider the compatibility between airport noise and potential development of new land uses when sizing and locating future infrastructure improvements within a capital improvements planning process in order to avoid the development of services that could lead to the development of incompatible uses.

Program Management Measure PM–1 approves the implementation of an aircraft monitoring system upgrade for the Lambert-St. Louis International Airport's aircraft monitoring system, so airport staff can obtain flight tracking data and prepare reports in response to community questions. In addition, selected permanent noise monitors should be relocated to sites that are closer to the existing 65 DNL noise exposure contour.

Program Management Measure PM–2 approves the St. Louis Airport Authority to reinitiate a community outreach program through a Community Forum.

Program Management Measure PM–3 approves the St. Louis Airport Authority to update the Noise Exposure Maps (NEMs) or prepare an update to the Noise Compatibility Program (NCP) when appropriate.

These determinations are described in detail and as set forth in the Record of Approval signed by Jim A. Johnson, Manager, Central Region Airports Division, on August 26, 2011. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the St. Louis Airport Authority, Lambert-St. Louis International Airport, Airport Planning & Development, 11495 Navaid Road, Bridgeton, Missouri 63044. The Record of Approval also will be available on-line at: *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/.*

Issued in Kansas City, Missouri, August 26, 2011.

Jim A. Johnson,

Manager, Central Region Airports Division.

[FR Doc. 2011–22607 Filed 9–2–11; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0094]

Agency Information Collection Activities: Notice of Request for Approval of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Request for the Renewal of a Previously Approved Collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval of a new information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 7, 2011.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2011–0094 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Silvio Cutuli, 202–366–2025, Planning, Environment, and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Relocation Assistance and Real Property Acquisition Statistics Collection on Federal and Federally Assisted Programs.

Type of request: Renewal without change, of a previously approved collection.

Background: The statistics collected concerns acquisition of real property and relocation of displaced persons for Federal and federally-assisted programs. It tabulates the real property acquisition activity and residential and non-residential relocation activity on a state-by-state annual basis. The statistics collected consists of a count of: The number of parcels acquired; the number of parcels acquired through condemnation; the number of parcels acquired through administrative settlement; the total amounts paid, deposited in court or otherwise made available to a property owner; the number of households permanently displaced; the total amount paid for residential moving expenses; the total amount paid for replacement housing payments; the number of housing of last resort cases completed; the number of tenant households permanently displaced; the number of businesses, non-profit organizations and farms permanently displaced; the total amount paid for nonresidential moving expenses; the total amount paid for nonresidential reestablishment expenses; and the total number of relocation appeals.

Respondents: State highway agencies and local government highway agencies receiving financial assistance for expenditures of Federal Funds on acquisition and relocation payments and required services to displaced persons.

Frequency: Annually.

Estimated Number of Respondents: 1,460 for file maintenance and 52 state highway agencies for statistical reports.

Estimated Total Burden on Respondents: 25,000 hours.

Estimated Average Burden per Response: 17 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 29, 2011.

Michael Howell,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2011–22604 Filed 9–2–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Annual Materials Report on New Bridge Construction and Bridge Rehabilitation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 1114 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144) continued the highway bridge program to enable States to improve the condition of their highway bridges over waterways, other topographical barriers, other highways, and railroads. Section 1114(f) amended 23 United State Code (U.S.C.) 144 by adding subsection (r), requiring the Secretary of Transportation to publish in the Federal Register a report describing construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects. As part of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244), 23 U.S.C. 144 subsection (r) became subsection (q), but the reporting requirement remained the same.

ADDRESSES: The report is posted on the FHWA Web site at: *http://www.fhwa.dot.gov/bridge/brdgtabs.cfm.*

FOR FURTHER INFORMATION CONTACT: Ms. Ann Shemaka, Office of Bridge Technology, HIBT–30, (202) 366–1575, or Mr. Thomas Everett, Office of Bridge Technology, HIBT–30, (202) 366–4675, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In conformance with 23 U.S.C. 144(q), the FHWA has produced a report that summarizes the types of construction materials used in new bridge construction and bridge rehabilitation projects. Data on Federal-aid and non-Federal-aid highway bridges are included in the report for completeness. The December 2009 National Bridge Inventory (NBI) dataset was used to identify the material types for bridges that were new or replaced within the defined time period. The FHWA's Financial Management Information System and the 2010 NBI were used to identify the material types for bridges that were rehabilitated within the defined time period. Currently preventative maintenance projects are included in the rehabilitation totals.

The report, which is available at *http://www.fhwa.dot.gov/bridge/brdgtabs.cfm,* consists of the following tables:

- Construction Materials for New and Replaced Bridges, a summary report which includes Federal-aid highways and non-Federal-aid highways built in 2009 and 2008.
- Construction Materials for Rehabilitated Bridges, a summary report which includes Federal-aid and non-Federal-aid highways rehabilitated in 2009 and 2008.
- Construction Materials for Combined New, Replaced and Rehabilitated Bridges, a summary report which combines the first two tables cited above.
- Federal-aid Highways: Construction Materials for New and Replaced Bridges

2009, a detailed State-by-State report with counts and areas for Federal-aid bridges built or replaced in 2009.

• Federal-aid Highways: Construction Materials for New and Replaced Bridges 2008, a detailed State-by-State report with counts and areas for Federal-aid bridges built or replaced in 2008.

• Non-Federal-aid Highways: Construction Materials for New and Replaced Bridges 2009, a detailed State-by-State report with counts and areas for non-Federal-aid bridges built or replaced in 2009.

• Non-Federal-aid Highways: Construction Materials for New and Replaced Bridges 2008, a detailed State-by-State report with counts and areas for non-Federal-aid bridges built or replaced in 2008.

• Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2009, a detailed State-by-State report with counts and areas for Federal-aid bridges rehabilitated in 2009.

• Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2008, a detailed State-by-State report with counts and areas for Federal-aid bridges rehabilitated in 2008.

• Non-Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2009, a detailed State-by-State report with counts and areas for non-Federal-aid bridges rehabilitated in 2009.

• Non-Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2008, a detailed State-by-State report with counts and areas for non-Federal-aid bridges rehabilitated in 2008.

• Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2009, which combines the 2009 reports on new, replaced and rehabilitated Federal-aid bridges.

• Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2008, which combines the 2008 reports on new, replaced and rehabilitated Federal-aid bridges.

• Non-Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2009, which combines the 2009 reports on new, replaced and rehabilitated non-Federal-aid bridges.

• Non-Federal-aid Highways: Construction Materials for New Replaced and Rehabilitated Bridges 2008, which combines the 2008 reports on new, replaced and rehabilitated non-Federal-aid bridges.

The tables provide data for 2 years: 2008 and 2009. The 2008 data is considered complete for new, replaced and rehabilitated bridges, with a minimal likelihood of upward changes in the totals. The 2009 data is considered partially complete for new bridges and complete for rehabilitated bridges, because many new bridges built in 2009 will not appear in the NBI until they are placed into service the following year. Therefore, next year's report will include 2009's data on new bridge construction, because the data will be complete.

Each table displays simple counts of bridges and total bridge deck area. Total bridge deck area is measured in square meters, by multiplying the bridge length by the deck width out-to-out. Culverts under fill are included in the counts but not in the areas because a roadway width is not collected. The data is categorized by the following material types, which are identified in the NBI: steel, concrete, pre-stressed concrete, and other. The category ''other'' includes wood, timber, masonry, aluminum, wrought iron, cast iron, and other. Material type is the predominate type for the main span(s).

Authority: 23 U.S.C. 144(q); Sec. 1114(f), Pub. L. 109–59, 119 Stat. 1144.

Issued on: August 25, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–22634 Filed 9–2–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

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

TIME AND DATE: September 22, 2011, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call 877.820.7831, passcode, 908048 to participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: August 26, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–22754 Filed 9–1–11; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 32; Sub–No. 103X; [1] Docket No. AB 355; Sub–No. 39X]

Boston and Maine Corporation—Abandonment Exemption—Middlesex County, Mass.; Springfield Terminal Railway Company; Discontinuance of Service Exemption; Middlesex County, MA

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for B&M to abandon, and for ST to discontinue service over, a 1.72-mile line of railroad known as the Watertown Branch extending from milepost 4.28 to milepost 6.0 in Middlesex County, Mass. The line traverses United States Postal Service Zip Codes 02471 and 02138.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To

[1] The abandonment notice of exemption was inadvertently filed as Docket No. AB 1083X and the discontinuance of service notice of exemption was inadvertently filed as Docket No. AB 1084X. The correct docket numbers for these transactions are Docket No. AB 32 (Sub-No. 103X) and Docket No. AB 355 (Sub-No. 39X), respectively.

address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on October 6, 2011, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 16, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 26, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Robert B. Burns, Esq., Pan Am Railways, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 9, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by September 6, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: August 25, 2011.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–22291 Filed 9–2–11; 8:45 am]

BILLING CODE 4915–01–P

[2] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before an abandonment or discontinuance is to be consummated. Applicants indicated consummation date of October 5, 2011, but, because the verified notice was filed on August 17, 2011, the earliest this transaction may be consummated is October 6, 2011.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 30, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by contacting the Treasury Departmental Office Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before October 6, 2011 to be assured of consideration.

Office of the Fiscal Assistant Secretary (OFAS)

OMB Number: 1505–0218.

Type of Review: Extension without change of a currently approved collection.

Title: Grants to States for Low-Income Housing Projects in lieu of Tax Credits.

Abstract: Authorized under the American Recovery and Reinvestment Act (ARRA), hereafter Recovery Act of 2009 (Pub. L. 111–5), the Department of the Treasury is implementing several provisions of the Act, more specifically Division B—Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions. Among these components is a program which requires Treasury to make payments, in lieu of a tax credit, to state housing credit agencies. State housing credit agencies use the funds to make sub-awards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. The collection of information is necessary to properly monitor compliance with program requirements.

Respondents: State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 57.

Departmental Office Clearance Officer: Jean Whaley, Department of the Treasury, 1500 Pennsylvania Ave., NW., Rm. 2045, Washington, DC 20220; (202) 622–0637.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–22615 Filed 9–2–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (the CDFI Fund).

DATES: The next meeting of the Advisory Board will be held from 9 a.m. to 5 p.m. Eastern Time on Tuesday, September 13, 2011.

ADDRESSES: The Advisory Board meeting will be held in the Cash Room at the U.S. Department of the Treasury located at 1500 Pennsylvania Avenue, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: The CDFI Fund's Office of Legislative and External Affairs, 601 Thirteenth Street, NW., Suite 200 South, Washington, DC 20005, (202) 622–8042 (this is not a toll free number). Other information regarding the CDFI Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the CDFI Fund (who has been delegated the authority to administer the CDFI Fund) on the policies regarding the activities of the CDFI Fund. The Advisory Board shall not advise the CDFI Fund on the granting or denial of any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held in the Cash Room at the U.S. Department of the Treasury located at 1500 Pennsylvania Avenue, NW., Washington, DC 20005, from 9 a.m. to 5 p.m. Eastern Time on Tuesday, September 13, 2011. The room will accommodate up to 50 members of the public. Seats are available to members of the public on a first-come, first-served basis.

Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Because the meeting will be held in a secured Federal building, members of the public who desire to attend the meeting must contact the CDFI Fund's Office of Legislative and External Affairs by 5 p.m. Eastern Time on Wednesday, September 7, 2011 by e-mail at *AdvisoryBoard@cdfi.treas.gov,* to inform the CDFI Fund of your desire to attend the meeting and to provide the following information which is required to facilitate your entry to the facility: name as it appears on a government issued identification; date of birth; and social security number.

Anyone who would like to have the Advisory Board consider a written statement must submit it to the CDFI Fund's Office of Legislative and External Affairs by 5 p.m. Eastern Time on Wednesday, September 7, 2011 by mail to 601 Thirteenth Street, NW., Suite 200 South, Washington, DC 20005, or by e-mail at *AdvisoryBoard@cdfi.treas.gov.*

The Advisory Board meeting will include a report from the Director on the activities of the CDFI Fund since the last Advisory Board meeting, as well as policy, programmatic, fiscal and legislative initiatives for the years 2011 and 2012.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: August 30, 2011.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2011–22609 Filed 9–2–11; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines (IRISL)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons the names of 10 newly-designated entities and three newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: The designation by the Director of OFAC, pursuant to Executive Order 13382, of the 10 entities and three individuals identified in this notice was effective on June 20, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, tel.: 202/622–2490, Office of Foreign Assets Control; Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control; or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On June 20, 2011, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated 10 entities and three individuals whose property

and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

Entities

ATLANTIC INTERMODAL, United Arab Emirates [NPWMD].

AZORES SHIPPING COMPANY LL FZE, P.O. Box 5232, Fujairah, United Arab Emirates; Business Registration Document #2112 (United Arab Emirates); Telephone: 97192282978; Fax: 97192282979 [NPWMD].

CRYSTAL SHIPPING FZE, Dubai, United Arab Emirates; E-mail Address md@pacificship.net; Fax: 97143591921 [NPWMD].

FAIRWAY SHIPPING LTD, 83 Victoria Street, London SW1H 0HW, United Kingdom; Business Registration Document #6531277 (United Kingdom); Telephone: 02072229255 [NPWMD].

GREAT OCEAN SHIPPING SERVICES (L.L.C.), 2nd Floor, Sharaf Building, Al Mina Road, Bur Dubai, Dubai, United Arab Emirates; Business Registration Document #606318 (United Arab Emirates) issued 5 Feb 2008; E-mail Address info@oceanshg.com; Web site *http://www.oceanshg.com;* Telephone: 97143525000; Fax: 97143518008 [NPWMD].

LEADING MARITIME PTE. LTD. (a.k.a. LEADMARINE), 200 Middle Road, #14–01 Prime Centre 188980, Singapore; Business Registration Document #200818433E (Singapore) issued 2008; Telephone: 6563343772; Fax: 6563343126 [NPWMD].

LEADMARINE (a.k.a. LEADING MARITIME PTE. LTD.), 200 Middle Road, #14–01 Prime Centre 188980, Singapore; Business Registration Document #200818433E (Singapore) issued 2008; Telephone: 6563343772; Fax: 6563343126 [NPWMD].

PACIFIC SHIPPING DMCEST, 206, Sharaf Building, Al Mina Road, Bur Dubai, Dubai, United Arab Emirates; Business Registration Document #167694 (United Arab Emirates) issued 2008; E-mail Address ops@pacificship.net; alt. E-mail Address pacific@pacificship.net; Telephone: 97143595580; Alt. Telephone: 97143516363; Fax: 97143527812 [NPWMD].

PEARL SHIP MANAGEMENT L.L.C., Dubai, United Arab Emirates; Email Address technical@pearlsmc.com; Telephone: 97143525333; Fax: 97143518008 [NPWMD].

SANTEX LINES LIMITED (a.k.a. SANTEX SHIPPING COMPANY; a.k.a. SANTEXLINES), Suite 1501, Shanghai Zhongrong Plaza, 1088 Pudong (S) Road, Shanghai 200122, China; F23A–D, Times Plaza No. 1, Taizi Road, Shekou, Shenzhen 518067, China [NPWMD].

SANTEX SHIPPING COMPANY (a.k.a. SANTEX LINES LIMITED; a.k.a. SANTEXLINES), Suite 1501, Shanghai Zhongrong Plaza, 1088 Pudong (S) Road, Shanghai 200122, China; F23A–D, Times Plaza No. 1, Taizi Road, Shekou, Shenzhen 518067, China [NPWMD].

SANTEXLINES (a.k.a. SANTEX LINES LIMITED; a.k.a. SANTEX SHIPPING COMPANY), Suite 1501, Shanghai Zhongrong Plaza, 1088 Pudong (S) Road, Shanghai 200122, China; F23A–D, Times Plaza No. 1, Taizi Road, Shekou, Shenzhen 518067, China [NPWMD].

SINOSE MARITIME PTE. LTD., 200 Middle Road, #14–03/04 Prime Centre 188980, Singapore; Business Registration Document #198200741H (Singapore) issued 1982; Telephone: 6562201144; Fax: 6562240181; Alt. Fax: 6562255614 [NPWMD].

Individuals

MOGHADDAMI FARD, Mohammad, United Arab Emirates; DOB 19 Jul 1956; nationality Iran; Passport N10623175 (Iran) issued 27 Mar 2007 expires 26 Mar 2012 (individual) [NPWMD].

TAFAZOLI, Ahmad (a.k.a. TAFAZOLY, Ahmad; a.k.a. TAFAZZOLI, Ahmad); DOB 27 May 1956; POB Bojnord, Iran; nationality Iran; Passport R10748186 (Iran) issued 22 Jan 2007 expires 22 Jan 2012 (individual) [NPWMD].

GHEZEL AYAGH, Alireza (a.k.a. GHEZELAYAGH, Alireza); DOB 8 Mar 1979; POB Kerman, Iran; nationality Iran; Passport E12596608 (Iran) (individual) [NPWMD].

Dated: August 29, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–22681 Filed 9–2–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines (IRISL)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of three vessels identified as property blocked because of their connection to the Islamic Republic of Iran Shipping Lines (IRISL), is updating the entries of 21 already-blocked vessels to identify new names and/or other information, and is removing the names of 10 vessels previously identified as property blocked because of their connection to IRISL from OFAC's list of Specially Designated Nationals and Blocked Persons. OFAC is also updating the information of two entities affiliated with IRISL.

DATES: The identification, updates, and removal made by the Director of OFAC, pursuant to Executive Order 13382, of the 34 vessels and two entities in this notice was effective on March 31, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, *tel.:* 202/622–2490, Office of Foreign Assets Control; Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control; or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have

materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On March 31, 2011, the Director of OFAC updated the information on OFAC's list of Specially Designated Nationals and Blocked Persons of the following two entities affiliated with the Islamic Republic of Iran Shipping Lines (IRISL), identified three vessels as property of IRISL, updated 21 already-blocked IRISL vessels to identify new names or other information given to those vessels, and removed 10 vessels that were previously identified as property of IRISL. Banks are instructed to reject any funds transfer referencing a blocked vessel and must notify OFAC, via facsimile with a copy of the payment instructions that funds have been returned to the remitter due to the possible involvement of a SDN vessel in the underlying transaction.

Updated Information of Entities Associated with IRISL:

Hafiz Darya Shipping Co (a.k.a. Hafiz Darya Shipping Lines Company; a.k.a. HDS Lines), No 60, Ehteshamiyeh Square, 7th Neyestan Street, Pasdaran Avenue, Tehran, Iran; BIC Container Code HDXU; Business Registration Document # 5478431 issued Mar 2009 [NPWMD]

Seibow Logistics Limited, Room 803, 8/F, Futura Plaza, 111 How Kimg St, Kwun Tong, Kowloon, Hong Kong, China; BIC Container Code SBAU; Business Registration Document # 1218675 issued 18 Mar 2008 [NPWMD]

Newly Identified Vessels:

Dorita (f.k.a. Iran Moein) General Cargo 2,495DWT 1,630GRT Iran flag (IRISL); Vessel Registration Identification IMO 8605234 (Iran) (vessel) [NPWMD]

Kados (f.k.a. Iran Sahel) General Cargo 3,816DWT 2,842GRT Iran flag (IRISL); Vessel Registration Identification IMO 9137258 (Iran) (vessel) [NPWMD]

Salim Bulk Carrier 53,100DWT 31,117GRT Malta flag (IRISL); Vessel Registration Identification IMO 9465851 (Malta) (vessel) [NPWMD]

Already-blocked Vessels with New Information:

Armis (f.k.a. Iran Zanjan; f.k.a. Visea) Container Ship 33,850DWT 25,391GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9283019 (Barbados) (vessel) [NPWMD]

Atena (f.k.a. Iran Yazd; f.k.a. Lancelin) Bulk Carrier 72,642DWT 40,609GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9213387 (Cyprus) (vessel) [NPWMD]

Daffodil (f.k.a. Eleventh Ocean) Container Ship 41,962DWT 36,014GRT Malta flag (IRISL); Vessel Registration Identification IMO 9209324 (Malta) (vessel) [NPWMD]

Dandle (f.k.a. Twelfth Ocean) Container Ship 41,971DWT 36,014GRT Malta flag (IRISL); Vessel Registration Identification IMO 9209348 (Malta) (vessel) [NPWMD]

Decker (f.k.a. Fifth Ocean) Container Ship 81,112DWT 75,395GRT Malta flag (IRISL); Vessel Registration Identification IMO 9349667 (Malta) (vessel) [NPWMD]

Dorsan (f.k.a. Iran Khorasan; f.k.a. Khorasan) Bulk Carrier 72,622DWT 39,424GRT Malta flag (IRISL); Vessel Registration Identification IMO 9193214 (Malta) (vessel) [NPWMD]

Eighth Ocean General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165803 (Malta) (vessel) [NPWMD]

Gabion (f.k.a. Seventh Ocean) General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165786 (Malta) (vessel) [NPWMD]

Galax (f.k.a. Ninth Ocean) General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165798 (Malta) (vessel) [NPWMD]

Gladiolus (f.k.a. Tenth Ocean) General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165815 (Malta) (vessel) [NPWMD]

Golestan (f.k.a. Iran Golestan) Bulk Carrier 72,162DWT 39,517GRT Malta flag (IRISL); Vessel Registration Identification IMO 9226944 (Malta) (vessel) [NPWMD]

Hadis (f.k.a. Iran Ilam; f.k.a. Sepitam) Container Ship 37,894DWT 27,681GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9283033 (Barbados) (vessel) [NPWMD]

Hamadan (f.k.a. Iran Hamadan) Bulk Carrier 72,162DWT 39,517GRT Malta flag (IRISL); Vessel Registration Identification IMO 9226956 (Malta) (vessel) [NPWMD]

Mazandaran (f.k.a. Iran Mazandaran) Bulk Carrier 72,642DWT 39,424GRT Malta flag (IRISL); Vessel Registration Identification IMO 9193197 (Malta) (vessel) [NPWMD]

Nafis (f.k.a. Iran Azarbayjan; f.k.a. ZAWA) Bulk Carrier 72,642DWT 39,424GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9193185 (Cyprus) (vessel) [NPWMD]

Pardis (f.k.a. Iran Yasooj; f.k.a. Simber) Container Ship 33,812DWT 25,391GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9284142 (Barbados) (vessel) [NPWMD]

Parmis (f.k.a. Iran Piroozi; f.k.a. Sakas) Container Ship 33,853DWT 25,391GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9283007 (Barbados) (vessel) [NPWMD]

Salis (f.k.a. Iran Fars; f.k.a. Sewak) Container Ship 33,850DWT 25,391GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9283021 (Barbados) (vessel) [NPWMD]

Sania (f.k.a. Iran Nowshahr) General Cargo 7,004DWT 5,676GRT Iran flag (IRISL); Vessel Registration Identification IMO 9367994 (Iran) (vessel) [NPWMD]

Somia (f.k.a. Iran Torkaman) General Cargo 7,004DWT 5,676GRT Iran flag (IRISL); Vessel Registration Identification IMO 9368015 (Iran) (vessel) [NPWMD]

tandis (f.k.a. Iran Ardebil; f.k.a. Sepanta) Container Ship 37,875DWT 27,681GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9284154 (Barbados) (vessel) [NPWMD]

Deleted Vessels:

Developer (a.k.a. Iran Developer) Bulk Carrier 43,300DWT 25,768GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8309660 (vessel) [NPWMD]

Iran Azadi Bulk Carrier 35,839DWT 20,672GRT Iran flag (IRISL); Vessel Registration Identification IMO 7632838 (vessel) [NPWMD]

Iran Baghaei General Cargo 17,945DWT 13,914GRT Iran flag (IRISL); Vessel

Registration Identification IMO 7502734 (vessel) [NPWMD]
Iran Bagheri General Cargo 17,928DWT 13,914GRT Iran flag (IRISL); Vessel Registration Identification IMO 7428811 (vessel) [NPWMD]
Iran Broojerdi General Cargo 17,929DWT 13,914GRT Iran flag (IRISL); Vessel Registration Identification IMO 7502722 (vessel) [NPWMD]
Iran Mahallati General Cargo 17,982DWT 13,914GRT Iranflag (IRISL); Vessel Registration Identification IMO 7428823 (vessel) [NPWMD]
Iran Modares Bulk Carrier 33,663DWT 20,049GRT Iran flag (IRISL); Vessel Registration Identification IMO 7618985 (vessel) [NPWMD]
Iran Nabuvat General Cargo 19,212DWT 14,856GRT Iran flag (IRISL); Vessel Registration Identification IMO 7618571 (vessel) [NPWMD]
Iran Takhti General Cargo 23,720DWT 16,173GRT Iran flag (IRISL); Vessel Registration Identification IMO 7602194 (vessel) [NPWMD]
Iran Teyfouri General Cargo 23,720DWT 16,173GRT Iran flag (IRISL); Vessel Registration Identification IMO 7602211 (vessel) [NPWMD]

Dated: August 29, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–22684 Filed 9–2–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines (IRISL)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four vessels identified as property blocked because of their connection to the Islamic Republic of Iran Shipping Lines (IRISL) and is updating the entries on OFAC's list of Specially Designated Nationals and Blocked Persons of 10 already-blocked vessels to identify new names and/or other information.

DATES: The identification and updates made by the Director of OFAC, pursuant to Executive Order 13382, of the 14 vessels in this notice was effective on March 24, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, *tel.:* 202/622–2490, Office of Foreign Assets Control; Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control; or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background:

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On March 24, 2011, the Director of OFAC identified four vessels as property of the Islamic Republic of Iran Shipping Lines (IRISL) and updated the entries on OFAC's list of Specially Designated Nationals and Blocked Persons of 10 already-blocked IRISL vessels to identify new names or other information given to those vessels. Banks are instructed to reject any funds transfer referencing a blocked vessel and must notify OFAC, via facsimile with a copy of the payment instructions that funds have been returned to the remitter due to the possible involvement of a SDN vessel in the underlying transaction.

Newly Identified Vessels:

IRAN DARYA General Cargo 3,850DWT 2,842GRT Iran flag (IRISL); Vessel Registration Identification IMO 9245304 (Iran) (vessel) [NPWMD]
NARDIS (f.k.a. FERDOS) (Iran) General Cargo 3,817DWT 2,842GRT Iran flag (IRISL); Vessel Registration Identification IMO 9137246 (Iran) (vessel) [NPWMD]
PARMIS (f.k.a. IRAN BARAN; f.k.a. PARDIS) General Cargo 3,839DWT 2,842GRT Iran flag (IRISL); Vessel Registration Identification IMO 9245316 (Iran) (vessel) [NPWMD]
PATRIS General Cargo 3,853DWT 2,842GRT Malta flag (IRISL); Vessel Registration Identification IMO 9137210 (Malta) (vessel) [NPWMD]

Already-Blocked Vessels With New Information:

CHAIRMAN (f.k.a. ALIM; f.k.a. IRAN ALIM) Bulk Carrier 53,100DWT 31,117GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9465849 (Malta) (vessel) [NPWMD]
CHAPAREL (f.k.a. HAKIM; f.k.a. IRAN HAKIM) Bulk Carrier 53,100DWT 31,117GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9465863 (Malta) (vessel) [NPWMD]
CHAPLET (f.k.a. IRAN RAHIM; f.k.a. RAHIM) Bulk Carrier 53,100DWT 31,117GRT Malta flag (IRISL); Vessel Registration Identification IMO 9465746 (vessel) [NPWMD]
CHAPMAN (f.k.a. AZIM; f.k.a. IRAN AZIM) Bulk Carrier 53,100DWT 31,117GRT MALTA flag (IRISL);

Vessel Registration Identification IMO 9465760 (Malta) (vessel) [NPWMD]
CHARIOT (f.k.a. IRAN KARIM; f.k.a. KARIM) Bulk Carrier 53,100DWT 31,117GRT Malta flag (IRISL); Vessel Registration Identification IMO 9465758 (vessel) [NPWMD]
SABRINA (f.k.a. IRAN BASHEER) General Cargo 2,850DWT 2,563GRT Iran flag (IRISL); Vessel Registration Identification IMO 8215742 (vessel) [NPWMD]
SARINA (f.k.a. IRAN SAHAR; f.k.a. RA-EES ALI) General Cargo 2,876DWT 2,576GRT Iran flag (IRISL); Vessel Registration Identification IMO 8203608 (vessel) [NPWMD]
SARIR (f.k.a. IRAN AMIRABAD) General Cargo 7,004DWT 5,676GRT Iran flag (IRISL); Vessel Registration Identification IMO 9368003 (vessel) [NPWMD]
VIANA (f.k.a. IRAN GHADEER) General Cargo 3,955DWT 3,638GRT Iran flag (IRISL); Vessel Registration Identification IMO 9010723 (vessel) [NPWMD]
VISTA (f.k.a. IRAN BASEER) General Cargo 3,955DWT 3,638GRT Iran flag (IRISL); Vessel Registration Identification IMO 9010711 (vessel) [NPWMD]

Dated: August 29, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–22685 Filed 9–2–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines (IRISL)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing one vessel previously identified as property blocked because of its connection to the Islamic Republic of Iran Shipping Lines (IRISL) from OFAC's list of Specially Designated Nationals and Blocked Persons.

DATES: This removal by the Director of OFAC was effective on February 14, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, *tel.:* 202/622–2490, Office of Foreign Assets Control; Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control; or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

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Background

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Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On February 14, 2011, the Director of OFAC removed one vessel that was previously identified as property of the Islamic Republic of Iran Shipping Lines (IRISL) from OFAC's list of Specially Designated Nationals and Blocked Persons.

Removed Vessel

Fourth Ocean Container Ship 82,200DWT 74,200GRT Malta flag (IRISL); Vessel Registration Identification IMO 9349605 (Malta) (vessel) [NPWMD].

Dated: August 29, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–22686 Filed 9–2–11; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Three Individuals Pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals whose property and interests in property are blocked pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria.''

DATES: The designation by the Director of OFAC of the three individuals identified in this notice, pursuant to Executive Order 13573, is effective on August 30, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202/622–0077.

Background

On May 18, 2011, the President issued Executive Order 13573, ''Blocking Property of Senior Officials of the Government of Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, which was expanded in scope in Executive Order 13572 of April 29, 2011.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To be a senior official of the Government of Syria; (2) to be an agency or instrumentality of the Government of Syria, or owned or controlled, directly or indirectly, by the Government of Syria or by an official or officials of the Government of Syria; (3) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property an interests in property are blocked pursuant to this order; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of directly or indirectly, any person whose property and interest are blocked pursuant to this order.

On August 30, 2011, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order, three of individuals whose property and interests in property are blocked pursuant to Executive Order 13573.

The listings for these individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. AL-MOALLEM, Walid (a.k.a. MUALLEM, Walid; a.k.a. AL-MOUALEM, Walid; a.k.a. AL-MUALEM, Walid; a.k.a. AL-MUALLEM, Walid; a.k.a. MUHI EDDINE MOALLEM, Walid; a.k.a. MOALLEM, Walid; a.k.a. AL-MOUALLEM, Walid), DOB 1941; POB Damascus, Syria; Foreign and Expatriates Minister; Minister for Foreign Affairs (INDIVIDUAL) [Syria].

2. SHAABAN, Bouthaina (a.k.a. SHAABAN, Buthaina), Rawda Sq., Damascus, Syria; DOB 1953; POB Homs, Syria; Presidential Political and Media Advisor; Minister, Political and Media Advisor at the Presidency; Doctor (INDIVIDUAL) [Syria].

3. KARIM ALI, Ali Abdul (a.k.a. ABD-AL-KARIM ALI, Ali; a.k.a. ABD-AL-KARIM, Ali; a.k.a. ABDULKARIM ALI, Ali; a.k.a. ABDULKARIM, Ali; a.k.a. KARIM ALI, Ali Abdel; a.k.a. KARIM, Ali Abdul), DOB 1953; POB Latakia Governorate, Syria; Syrian Ambassador to Lebanon (INDIVIDUAL) [Syria].

Dated: August 30, 2011.

Adam Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–22687 Filed 9–2–11; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on Five Petitions To List Seven Species of Hawaiian Yellow-faced Bees as Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2010–0012; MO 92210–0–008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on Five Petitions To List Seven Species of Hawaiian Yellow-faced Bees as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on five petitions to list seven species of Hawaiian yellow-faced bees (*Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana*) as endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing these seven species of Hawaiian yellow-faced bees is warranted. Currently, however, listing these seven species of Hawaiian yellow-faced bees is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add these seven species of Hawaiian yellow-faced bees to our candidate species list. We will develop a proposed rule to list these seven species of Hawaiian yellow-faced bees as our priorities allow. We will make any determinations on critical habitat during development of the proposed listing rule. In any interim period we will address the status of the candidate taxa through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on September 6, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R1–ES–2010–0012. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**); by telephone at 808–792–9400; or by facsimile at 808–792–9581. If you use a telecommunications device for the deaf (TTD) please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On March 23, 2009, we received five petitions dated March 23, 2009, from Scott Hoffman Black, Executive Director of the Xerces Society, requesting that seven species of Hawaiian yellow-faced bees be listed as endangered under the Act and critical habitat be designated.

Each petition contained information regarding the species' taxonomy and ecology, historical and current distribution, present status, and current and potential threats. We acknowledged the receipt of the petitions in a letter to Mr. Black, dated May 8, 2009. In that letter we also stated that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted at that time. We published the 90-day finding in the **Federal Register** on June 16, 2010 (75 FR 34077). This notice constitutes the 12-month finding on the March 23, 2009, petitions to list the seven species of Hawaiian yellow-faced bees as endangered.

Species Information

Overview of the Genus *Hylaeus*

The seven species of bees described in this finding belong to the genus *Hylaeus. Hylaeus* is a large, globally distributed genus comprised of over 500 species worldwide. In the Hawaiian Islands, the genus *Hylaeus* is widespread and very diverse, with 60 native species, including 20 endemic to single islands (Magnacca 2007a, p. 174). All 60 Hawaiian species are in the subgenus *Nesoprosopis* (Magnacca and Danforth 2006, p. 393). The Hawaiian *Hylaeus* genus belongs to the Colletidae family of bees, also known as plasterer bees due to their habit of lining their nests with salival secretions. The family is comprised of over 2,000 species, all of which are solitary nesting (unlike social wasps and bees), although a few do nest in close vicinity to each other.

The species of *Hylaeus* are commonly known as yellow-faced bees or masked bees for their yellow-to-white facial markings. All of the *Hylaeus* species roughly resemble small wasps in appearance, due to their slender bodies and their seeming lack of setae (sensory hairs). However, *Hylaeus* bees have plumose (branched) hairs on the body that are longest on the sides of the thorax. To a discerning eye, it is these plumose setae that readily distinguish them from wasps (Michener 2000, p. 55).

A great deal of our knowledge on Hawaiian *Hylaeus* bees is based upon surveys by Robert Cyril Layton Perkins, a distinguished British entomologist and naturalist renowned for his pioneering work on the insects of the Hawaiian Islands, particularly the Hymenoptera (sawflies, wasps, bees, and ants), in the early 20th Century. His surveys were conducted between 1892 and 1906, and form the basis for most of the historical records of *Hylaeus* in the Hawaiian Islands. According to Perkins, *Hylaeus* species were ''almost the most ubiquitous of any Hawaiian insects'' (Perkins 1913, p. lxxxi). However, there are about 90 years between Perkins' surveys and the most recent surveys conducted in the late 1990s for *Hylaeus* bees in the Hawaiian Islands.

Surveys in more recent years (1998–2010) for *Hylaeus* spp. in the Hawaiian Islands have largely involved targeted collecting on specific flowering plants (Daly and Magnacca 2003, pp. 217–233; Magnacca in litt. 2011, p. 5), rather than survey methods such as pan trapping or Pollard walks (see below). While this means the numbers of individuals and species observed are not strictly quantifiable by effort, the probability of collecting species actually present is

higher (Magnacca in litt. 2011, p. 5). Because the number and diversity of *Hylaeus* spp. tend to be locally concentrated rather than widely distributed, randomized and more quantifiable surveys such as pan trapping and Pollard walks are actually less effective means of locating *Hylaeus* spp. (Magnacca in litt. 2011, p. 5). Pan trapping involves the use of shallow pans of fluid, and relies on the organism falling or flying into the fluid preservative. Pollard walks involve observers walking along a fixed transect route and recording the insects observed.

The recent *Hylaeus* spp. survey efforts are not easily comparable to Perkins' collections, which are considered now to have been conducted opportunistically. For example, Perkins collected higher numbers of individuals and species in certain areas, including coastal areas that were much less disturbed at the time, and some species, such as *H. facilis,* were formerly very common but have almost entirely disappeared (Magnacca in litt. 2011, p. 5).

Life History of Genus *Hylaeus*

The following discussion includes all Hawaiian *Hylaeus* species, and specific information about the seven petitioned *Hylaeus* species.

Hawaiian *Hylaeus* species are grouped within two categories: Ground-nesting species that require relatively dry conditions, and wood-nesting species that are often found within wetter areas (Zimmerman 1972, p. 533; Daly and Magnacca 2003, p. 11). Nests of *Hylaeus* species are usually constructed opportunistically within dead twigs or plant stems, or other similarly small natural cavities under bark or rocks (*i.e.,* they seek out existing cavities that they suit to their own needs). This is unlike the nests of many other bee species, which are purposefully excavated or constructed underground. Like other *Hylaeus,* Hawaiian *Hylaeus* lack strong mandibles and other adaptations for digging and often use nest burrows abandoned by other insect species (Daly and Magnacca 2003, p. 9). The female *Hylaeus* bee lays eggs in brood cells she constructs in the nest and lines with a self-secreted, cellophane-like material. Prior to sealing the nest, the female provides her young with a mass of semiliquid nectar and pollen left alongside her eggs. Upon hatching, the grub-like larvae eat the provisions left for them, pupate, and eventually emerge as adults (Michener 2000, p. 24). The adult male and female bees feed upon flower nectar for nourishment. Many species, including the Hawaiian *Hylaeus,* lack an external structure for carrying pollen, called a scopa, and instead internally transport collected pollen, often mixed with nectar, within their crop (stomach).

Recent studies of visitation records of Hawaiian *Hylaeus* bees to native flowers (Daly and Magnacca 2003, p. 11) and pollination studies of native plants (Sakai *et al.* 1995, pp. 2,524–2,528; Cox and Elmqvist 2000, p. 1,238; Sahli *et al.* 2008, p. 1) have demonstrated Hawaiian *Hylaeus* species almost exclusively visit native plants to collect nectar and pollen, pollinating those plants in the process. *Hylaeus* bees are very rarely found visiting nonnative plants for nectar and pollen (Magnacca 2007a, pp. 186, 188), and are almost completely absent from habitats dominated by nonnative plant species (Daly and Magnacca 2003, p. 11). Sahli *et al.* (2008, p. 1) quantified pollinator visitation rates to all of the flowering plant species in communities on a Hawaiian lava flow dating from 1855 to understand how pollination webs and the integration of native and nonnative species changes with elevation. In that study, eight flowering plants were observed at six sites, which ranged in elevation from approximately 2,900 to 7,900 feet (ft) (approximately 880 to 2,400 meters (m)). The study also found the proportion of native pollinators changed along the elevation gradient; at least 40 to 50 percent of visits were from nonnative pollinators at low elevation, as opposed to 4 to 20 percent of visits by nonnative pollinators at mid to high elevations. *Hylaeus* bees were less abundant at lower elevations, and there were lower visitation rates of any pollinators to native plants at lower elevations, which suggest *Hylaeus* may not be easily replaceable by nonnative pollinators (Sahli *et al.* 2008, p. 1).

For some of the seven Hawaiian yellow-faced bees addressed in this finding, we have information about the specific host plants they visit for nectar and pollen. For some species, we have also identified primary host plants visited (see description of the species where noted). However, for others, we lack detailed information on the specific host plants visited for foraging. Nonetheless, researchers believe native plants both endemic and indigenous to the Hawaiian Islands are essential to the survival of the *Hylaeus* species (Hopper *et al.* 1996, pp. 8–9; Daly and Magnacca 2003, pp. 217–229; Magnacca 2007a, pp. 185–186).

Hawaiian Island Ecosystems

The five Hawaiian Island ecosystems that support the seven Hawaiian yellow-faced bees addressed in this 12-month finding are described in the following section. See Table 1 below for a list of the ecosystems from which each species is reported. Because Hawaiian *Hylaeus* spp., including these seven, are believed to be essential pollinators of the native Hawaiian plant fauna, we are providing this background information on the different ecosystems in which they occur to better elaborate upon the specific threats found in the five ecosystem types.

TABLE 1—CURRENT (AND HISTORICAL) DISTRIBUTION OF THE SEVEN YELLOW–FACED BEES BY ECOSYSTEM TYPE AND ISLAND

Species and number of current populations	Ecosystems					
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane mesic	Montane dry
H. anthracinus, 13 populations	HI, MA, MO, OA.	HI, KAH, (*LA), MA, (*MO), (*OA).	N/A	N/A		HI.
H. assimulans, 5 populations	KAH, (*MA), (*OA).	LA, MA, (*OA)	N/A	N/A		N/A.
H. facilis, 2 populations	(*MA), MO, (*OA).	(*LA), (*OA)	(*LA), (*MA), (*OA).	(*MA), OA	(*MO)	N/A.
H. hilaris, 1 population	(*LA), (*MA), MO.	(*MA)	N/A	N/A		N/A.
H. kuakea, 2 populations	N/A	N/A	OA	N/A		N/A.
H. longiceps, 6 populations	LA, MA, MO, OA.	LA, (*MA), (*MO).	N/A	N/A		N/A.

TABLE 1—CURRENT (AND HISTORICAL) DISTRIBUTION OF THE SEVEN YELLOW–FACED BEES BY ECOSYSTEM TYPE AND ISLAND—Continued

Species and number of current populations	Ecosystems					
	Coastal	Lowland dry	Lowland mesic	Lowland wet	Montane mesic	Montane dry
H. mana, 1 population	N/A	N/A	OA	N/A		N/A.

HI = Hawaii (Island); KAH = Kahoolawe; LA = Lanai; MA = Maui; MO = Molokai; OA = Oahu;
(*XX) denotes a historical population; N/A means no population records

Coastal Ecosystem

The coastal ecosystem is found on all of the main Hawaiian Islands, with the highest species diversity found in the least populated coastal areas of Hawaii, Maui, Molokai, Kahoolawe, Oahu, and Kauai, and their associated islets, and extends from sea level to approximately 1,000 ft (approximately 300 m) in elevation. The coastal vegetation zone is typically dry, with annual rainfall of less than approximately 20 inches (in) (50.8 centimeters (cm)); however windward rainfall may be high enough (up to approximately 40 in (1,000 mm)) to support mesic-associated and sometimes wet-associated vegetation (Gagne and Cuddihy 1999, pp. 54–66). Compared to dry and mesic ecosystems, biological diversity (number of species) is low to moderate in the coastal ecosystem, but may include some specialized plants and animals such as nesting seabirds and the rare native plant *Sesbania tomentosa* (ohai) (The Nature Conservancy (TNC) 2006a). *Sesbania tomentosa* formerly occurred widely in lower elevation dry habitat on all of the main islands and at least on Necker and Nihoa of the Northwestern Hawaiian Islands. The species is now scattered throughout its former range, and is restricted to relic populations on sandy beaches, on dunes, on soil pockets on lava, and along pond margins (Wagner *et al.* 1990, p. 705).

The dominant native vegetation in coastal ecosystems is the shrub *Scaevola sericea* (naupaka kahakai) (Alpha *et al.* 1996, p. 86). Other common native plant species include *Ipomoea pes-caprae* (beach morning-glory), *Sporobolus virginicus* (beach dropseed), *Jacquemontia ovata* (pau o Hiiaka), and *Sesuvium portulacastrum* (akulikuli or sea purslane) (Wagner *et al.* 1999, pp. 57–59). Among the *Hylaeus* species addressed in this finding, five are known from coastal ecosystems, including *H. anthracinus, H. assimulans, H. facilis, H. hilaris,* and *H. longiceps.*

Lowland Dry Ecosystem

The lowland dry ecosystem includes shrublands and forests below approximately 3,300 ft (1,000 m) in elevation that receive less than 50 in (127 cm) annual rainfall, or are in otherwise prevailingly dry substrate conditions. Areas consisting of predominantly native species in the lowland dry ecosystem are now rare. This ecosystem is found on the islands of Hawaii, Maui, Molokai, Lanai, Kahoolawe, Oahu, and Kauai, and is best represented on the leeward sides of the islands (Gagne and Cuddihy 1999, p. 67). Biological diversity is low to moderate in this ecosystem, and includes specialized animals and plants such as the Hawaiian owl or pueo (*Asio flammeus sandwichensis*) and *Santalum ellipticum* (iliahialoe) (Wagner *et al.* 1999, pp. 1,220–1,221; TNC 2006b).

Hylaeus anthracinus, H. assimulans, H. facilis, and *H. longiceps* are known from lowland dry forests. These forests are typically dominated by *Diospyros sandwicensis* (lama), *Erythrina sandwicensis* (wiliwili), *Nestegis sandwicensis* (olopua), or *Metrosideros polymorpha* (ohia) and a diversity of native shrubs growing within the understory (Gagne and Cuddihy 1999, pp. 72–74).

Lowland Mesic Ecosystem

The lowland mesic ecosystem includes a variety of grasslands, shrublands, and forests, below approximately 3,300 ft (1,000 m) in elevation, that receive between 50 and 75 in (127 and 191 cm) annual rainfall, or are in otherwise mesic substrate conditions (TNC 2006c). In the Hawaiian Islands, this ecosystem is found on Hawaii, Maui, Molokai, Lanai, Oahu, and Kauai, on both windward and leeward sides of the islands. Biological diversity is high in this system (TNC 2006c).

Lowland mesic forests are typically dominated by *Acacia koa* (koa), *Diospyros sandwicensis, Metrosideros polymorpha,* or *Nestegis sandwicensis,* and a diversity of understory trees and native shrubs growing below the canopy species (Gagne and Cuddihy 1999, p. 80–82). Historically, *Hylaeus facilis* was known from lowland mesic forest, but currently only *H. kuakea* and *H. mana* are found in this habitat.

Lowland Wet Ecosystem

The lowland wet ecosystem is generally found below approximately 3,300 ft (1,000 m) in elevation on the windward sides of the main Hawaiian Islands, except Kahoolawe (Gagne and Cuddihy 1999, p. 85; TNC 2006d). These areas include a variety of wet grasslands, shrublands, and forests that receive greater than 75 in (191 cm) annual precipitation, or are in otherwise wet substrate conditions (TNC 2006d). Biological diversity is high in this system (TNC 2006d). The majority of lowland wet forests are dominated by *Metrosideros polymorpha,* with understory trees such as *Psychotria* spp. (kopiko) and *Antidesma platyphyllum* (hame) (Gagne and Cuddihy 1999, p. 87). Currently, *Hylaeus facilis* is known from lowland wet forest (Daly and Magnacca 2003, p. 81).

Montane Dry Ecosystem

The montane dry ecosystem is composed of natural communities (shrublands, grasslands, forest) found at elevations between approximately 3,300 and 6,600 ft (1,000 and 2,000 m), in areas where annual precipitation is less than 50 in (127 cm), or otherwise in dry substrate conditions (TNC 2006g). Montane dry forests occur on the leeward sides of the islands of Maui and Hawaii, and biological diversity is moderate (Gagne and Cuddihy 1999, p. 93; TNC 2006g). Montane dry forests are dominated by some combination of *Acacia koa, Sophora chrysophylla*) (mamame), *Metrosideros polymorpha,* and rarely, *Chamaesyce olowaluana* (akoko) (Gagne and Cuddihy, p. 95). In 2004, a single individual of *H. anthracinus* was collected in montane dry forest on Hawaii Island.

Specific Information on *Hylaeus anthracinus*

Taxonomy and Description

Hylaeus anthracinus was first described as *Prosopis anthracina* by Smith in 1873 (Daly and Magnacca 2003, p. 55), and transferred to *Nesoprosopis* 20 years later (Perkins 1899, pp. 75). *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in

1923 (Meade-Waldo 1923, p. 1). Although the distinctness of this species remains unquestioned, recent genetic evidence (Magnacca and Brown 2010, pp. 5–7) suggests *H. anthracinus* may be composed of three cryptic (not recognized) species or subspecies that represent the populations on Hawaii, Maui and Kahoolawe, and Molokai and Oahu. However, this has not been established scientifically; therefore, we treat *H. anthracinus* as a single species in this finding.

Hylaeus anthracinus is a medium-sized, black bee with clear to smoky wings and black legs. The male has a single large yellow spot on his face, while below the antennal sockets the face is yellow. The female is entirely black and can be distinguished by the black hairs on the end of the abdomen and an unusual mandible that has three teeth, a characteristic shared only with *H. flavifrons,* a closely related species on Kauai (Daly and Magnacca 2003, p. 53).

Life History

The diet of the larval stage of *Hylaeus anthracinus* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the adult female. Likewise, the nesting habits of *H. anthracinus* are not known, but the species is thought to nest within the stems of coastal shrubs (Magnacca 2005a, p. 2).

Hylaeus anthracinus adults have been observed visiting the flowers of *Sesbania tomentosa, Scaevola sericea, Sida fallax* (ilima), *Argemone glauca* (pua kala), *Chamaesyce celastroides* (akoko), *Chamaesyce degeneri* (akoko), *Heliotropium anomalum* (hinahina), and *Myoporum sandwicense* (naio). This species has also been collected from inside the fruit capsule of *Kadua coriacea* (kioele) (Magnacca 2005a, p. 2). *Hylaeus anthracinus* has also been observed visiting *Tournefortia argentea* (tree heliotrope), a tree native to tropical Asia, Madagascar, tropical Australia, and Polynesia, for nectar and pollen (Wagner *et al.* 1999, p. 398; Daly and Magnacca 2003, p. 55; Magnacca 2007a, p. 181). *Tournefortia argentea* was first collected on Oahu in 1864–1865, and is naturalized and documented from all of the main islands except Kahoolawe (Wagner *et al.* 1999, p. 398). *Hylaeus anthracinus* commonly occurs alongside other *Hylaeus* species, including *H. longiceps* and *H. flavipes.*

Range and Distribution

Hylaeus anthracinus was historically known from numerous coastal and lowland dry forest habitats up to 2,000 ft (610 m) in elevation on the islands of Hawaii, Lanai, Maui, Molokai, and Oahu. Between 1997 and 2008, surveys for Hawaiian *Hylaeus* were conducted at 43 sites throughout the Hawaiian Islands that were either historical collecting localities for *H. anthracinus,* or potentially suitable habitat for this species. *Hylaeus anthracinus* was observed at 13 of the 43 survey sites, but had disappeared from each of the 9 historically occupied sites surveyed (Daly and Magnacca 2003, p. 217; Magnacca 2007b, p. 44). Several of the historical collection sites, such as Honolulu and Waikiki on Oahu and Kealakekua Bay on Hawaii, no longer contain *Hylaeus* habitat, which has been replaced by urban development or is dominated by nonnative vegetation (Liebherr and Polhemus 1997, pp. 346–347; Daly and Magnacca 2003, p. 55; Magnacca 2007a, pp. 186–188).

Hylaeus anthracinus is currently known from 13 small patches of coastal and lowland dry forest habitat (Magnacca 2005a, p. 2): five locations on the island of Hawaii; one location on Kahoolawe; two locations on Maui; three locations on Molokai; and two locations on Oahu (Daly and Magnacca 2003, p. 217; Magnacca 2005a, p. 2; Magnacca 2007b, p. 44). These 13 locations supported small populations of *H. anthracinus,* but the number of individual bees is unknown. In 2004, a single individual was collected in montane dry forest on the island of Hawaii; however, the presence of additional individuals has not been confirmed at this site (Magnacca 2005a, p. 2). Although it was previously unknown from the island of Kahoolawe, *H. anthracinus* was observed at one location on the island in 2002 (Daly and Magnacca 2003, p. 55). The species is believed to be extirpated from Lanai (Daly and Magnacca 2003, p. 55). Additionally, during surveys between 1997 and 2008, *H. anthracinus* was absent from 17 other sites on Hawaii, Maui, Molokai, and Oahu with potentially suitable habitat from which other species of *Hylaeus* were collected (Daly and Magnacca 2003; Magnacca, University of Hawaii at Hilo, pers. comm. 2008a).

Hawaii Island

Hylaeus anthracinus was first described by Perkins (1899, p. 100) from specimens collected by F. Smith on the Kona (west) coast at Kealakekua Bay. In the intervening 99 years, *H. anthracinus* appears to have declined significantly throughout its historical range on this coastline. Between 1997 and 2008, researchers thoroughly surveyed the area around Kealakekua Bay and Keei to the south, but found no species of *Hylaeus* and observed that most of these areas are either dominated by invasive, nonnative plants, such as *Leucaena leucephala* (koa haole), or lack vegetation entirely (Magnacca, pers. comm. 2008a). *Hylaeus anthracinus* is currently found in five locations in coastal and lowland dry forest on the leeward (west) side of the island, including Kohanaiki; Kaloko-Honokohau National Historic Park (NHP); Makalawena Beach; the Mahaiula section of Kekaha Kai (Kona Coast) State Park; and Kaulana Bay near Ka Lae (South Point). In addition, there is one recent collection from montane dry forest in the U.S. Army's Pohakuloa Training Area, in the northern part of the island. Collection reports from these six areas follow:

(A) Kohanaiki: *Hylaeus anthracinus* was collected in coastal habitat on *Tournefortia argentea* at this location near Puhili Point by Magnacca (2007b, p. 44). Kohanaiki is an area of land granted to indigenous Hawaiians in 1995 for cultural and recreational preservation and pursuits (Kohanaiki Ohana 1995 (*http://www.kohanaiki.org/*)). There is some possibility for increased recreational impact to the area, if and when adjacent privately owned parcels are developed, as is currently planned (Kohanaiki Ohana 1995 (*http://www.kohanaiki.org/*)).

(B) Kaloko-Honokohau NHP: In 2007, researchers collected *Hylaeus anthracinus* in coastal habitat in Kaloko-Honokohau NHP, which is just south of Kohanaiki, and managed by the National Park Service (NPS) (P. Aldrich, University of Hawaii at Manoa, pers. comm. 2008a; Magnacca, pers. comm. 2008c).

(C) Makalawena Beach: Researchers collected *Hylaeus anthracinus* in coastal habitat in south Kona at Makalawena Beach in 2007 (P. Aldrich, pers. comm., July 2008a). Inaccessible by motor vehicle, visitors must hike to the beach on a trail that begins in nearby Kekaha Kai State Park. Makalawena Beach is located on private land owned by Kamehameha Schools.

(D) Mahaiula Section of Kekaha Kai State Park: Researchers collected *Hylaeus anthracinus* in coastal habitat in the Mahaiula section of Kekaha Kai State Park in 2007 (P. Aldrich, unpublished data). The park is managed by the Hawaii Department of Land and Natural Resources' (DLNR) Division of State Parks, and is open to the public daily. This section of the park is accessed by a 1.5-mile (mi) (1.6-kilometer (km)) unpaved road from the main highway (Queen Kaahumanu Highway (Hwy 19)), and offers public

recreational opportunities for swimming and beach-related activities, such as hiking, picnicking, and boating (*http://www.hawaiistateparks.org/hawaiistateparks/parks/hawaii/index.cfm?park_id=47*).

(E) Kaulana Bay: *Hylaeus anthracinus* appears to be restricted to an area of 5,000–10,000 year-old lava flows east of Ka Lae at Kaulana Bay, where it and other species of *Hylaeus* were collected in 1999 and 2002 (Magnacca 2007a, p. 181). The substrate of these lava flows is distinct from the surrounding areas covered by Pahala ash (Magnacca, pers. comm. 2010b). The area near Ka Lae, at the southernmost tip of the island of Hawaii, is believed to be the best coastal habitat for *Hylaeus* on the island. However, *H. anthracinus* was absent from several sites with potentially suitable vegetation near Ka Lae and other sites to the east along the coast, including Kalu, Kaalualu, and Mahana, where other *Hylaeus* species were collected. The population of *H. anthracinus* at Kaulana Bay appears highly localized, and may have more stringent habitat requirements related to localized substrate type than other species of Hawaiian *Hylaeus* found in nearby areas (*e.g., H. difficilis* and *H. flavipes*). The Ka Lae area, including Kaulana Bay, is registered as a National Historic Landmark District and a large portion of the area is primarily owned by the State's Department of Hawaiian Home Lands (DHHL), although a smaller portion is privately owned. Public access to Kaulana Bay is not restricted, and the area is used for recreational activities such as off-road vehicle use (Magnacca, pers. comm. 2008a).

(F) U.S. Army's Pohakuloa Training Area (PTA): In 2004, one male *Hylaeus anthracinus* was collected on the southern slopes of Mauna Kea in montane dry forest habitat in the U.S. Army's PTA at approximately 5,200–5,400 ft (1,590–1,650 m) in elevation (Magnacca 2007b, p. 44). The specimen was found inside the fruit capsule of the federally endangered plant, *Hedyotis coriacea* (kioele). *Hylaeus anthracinus* has not been observed at the PTA since the collection made in 2004 (Magnacca 2007b, p. 44). It is unknown if this collection was a single vagrant individual or from an established population at the PTA (Magnacca 2007b, p. 44).

Kahoolawe Island

Previously unknown on Kahoolawe, a population of *Hylaeus anthracinus* was discovered in 2002 in coastal habitat at Pali o Kalapakea, where four specimens were collected at an elevation of 1,000 ft (300 m) (Daly and Magnacca 2003; Magnacca, pers. comm. 2008a). However, this species was absent from potentially suitable habitat located at Kamohio on the southeastern coast of the island where other *Hylaeus* species were collected. Overgrazing by introduced cattle and goats, and bombing and target practice by the U.S. military, have led to soil erosion resulting in the loss of almost all of the coastal and lowland dry forest habitat on this island (Warren 2004, p. 461). In 1993, Congress ended military use on Kahoolawe, and the Kahoolawe Island Reserve Commission (KIRC) was created to manage land use and restore Kahoolawe's natural resources (Dept. of Defense, p. 1). Access to the island is limited and controlled by KIRC, and activities conducted on the island include fishing, habitat restoration, historical preservation, and education. Commercial enterprises are currently prohibited on the island (Warren 2004, p. 1).

Maui

Perkins (1899, p. 100) originally described *Hylaeus anthracinus* as abundant in coastal and lowland habitat on the island of Maui, where it was known from four sites. Perkins' primary collection site for coastal bees on Maui was the Wailuku sandhills, which once supported a diverse bee fauna. Lacking adequate descriptions, researchers were unable to relocate two of the Perkins collection sites during recent surveys, but two sites were relocated and surveyed in 1999 and 2001 (Magnacca 2007a, p. 173). *Hylaeus anthracinus* has also been collected at Kanaio on the lower southern slopes of Haleakala, an unusual location for this otherwise exclusively coastal species. The species was also collected at the coast nearby, at Manawainui. Descriptions of these three sites follows:

(A) Wailuku Sand Hills: Formerly a large expanse of coastal dune habitat, the Wailuku sand hills remain as small remnant dunes and only one, at Waiehu, contains intact native vegetation potentially suitable for *Hylaeus* bees. This remnant coastal sand dune covers less than 2.5 acres (ac) (1 hectare (ha)) on State lands near a golf course. *Hylaeus anthracinus* was not observed during the 1999 and 2001 surveys in this location (Daly and Magnacca 2003, p. 217). The rest of the dunes have been destroyed by development or are overgrown with the nonnative plant *Prosopis pallida* (kiawe). Researchers observed that the Kahului section of the dunes, located south of the native remnant dune, no longer contains potentially suitable habitat for species of *Hylaeus* (Magnacca 2007a, p. 182).

(B) Kanaio Natural Area Reserve: *Hylaeus anthracinus* was collected in 1999 in remnant native lowland dry forest in the State's Kanaio Natural Area Reserve (NAR) on the southern slopes of Haleakala at 2,000 ft (600 m) in elevation (Daly and Magnacca 2003, p. 217). Kanaio NAR is a State-protected area of approximately 876 ac (355 ha), and contains patches of lowland dry forest and shrub lands. The State plans to rehabilitate habitat in the Kanaio NAR by excluding feral ungulates with fencing, managing weeds, and planting native species (*http://hawaii.gov/dlnr/dofaw/rpc/projects-on-maui*).

(C) Manawainui Gulch: In 1999, *Hylaeus anthracinus* was collected at this coastal site on land owned by the State's DHHL (Magnacca, pers. comm. 2008a). The site is east of Kahikinui, and should not be confused with the Manawainui Valley, which is east of Kaupo, or Manawainui Gulch at Ukumehame on west Maui.

Molokai

Perkins collected *Hylaeus anthracinus* at Kaulawai [Kauluwai] and two unknown sites: the lower slopes of the north Molokai mountains and the ''Molokai plains'' (Perkins 1899; Daly and Magnacca 2003, p. 55). *Hylaeus anthracinus* occurred in three of five sites surveyed between 1999 and 2005. These locations include TNC's Moomomi Preserve on Molokai's northwest coast, and Hoolehua Beach and Kaupikiawa, both located on the Kalaupapa peninsula (Magnacca, pers. comm. 2008a). This species was not observed at several other sites with potentially suitable habitat, including sand dune habitat near the Kaluakoi resort on Molokai's west coast (Magnacca, pers. comm. 2008a). Collection reports of these sites follow:

(A) Moomomi Preserve: Between 1999 and 2001, researchers collected *H. anthracinus* and *H. longiceps* from an area of native vegetation in coastal dune habitat within Moomomi Preserve (Magnacca 2007a, p. 181). Moomomi Preserve contains intact coastal dunes dominated by native vegetation, as well as dune and inland areas dominated by nonnative vegetation.

(B) Hoolehua Beach and Kaupikiawa: In 2005, *Hylaeus anthracinus* was collected at a coastal site above Hoolehua Beach near the tip of the Kalaupapa peninsula, and at Kaupikiawa, just to the east (Magnacca 2007b, p. 181). Both sites are located within Kalaupapa NHP, which is cooperatively managed by the NPS, DHHL, and the State's DLNR and Departments of Health (DOH) and Transportation (DOT). The areas on the

east side of the Kalaupapa peninsula are largely rocky and devoid of vegetation, but contain scattered patches of native coastal vegetation, similar to Ka Lae on the island of Hawaii (Magnacca 2007a, p. 181).

Oahu

Hylaeus anthracinus was historically known from seven sites on the island of Oahu, although two of the coastal sites were not conclusively identified by Perkins and the exact locations cannot now be determined (Perkins 1899, p. 100). This species appears to have declined precipitously since Perkins' collecting period on Oahu (1892–1906) and is currently only known from two sites, Kaena Point NAR and Mokuauia (Goat Island). Between 1997 and 2008, *H. anthracinus* was not found during surveys of five of its historical Perkins-era collection sites. Several of these sites no longer provide suitable habitat for *Hylaeus* species because native vegetation has been removed during urbanization, or the sites are dominated by invasive, nonnative vegetation. These sites include Honolulu, Waikiki, ''the Honolulu mountains,'' Waialua, and the Waianae coast (Liebherr and Polhemus 1997, pp. 345–347; Daly and Magnacca 2003, p. 55). Between 1999 and 2002, researchers searched coastal habitat at Makapuu and Kalaeloa (Barber's Point), but did not find any species of *Hylaeus* (Magnacca, pers. comm. 2008a). The coastal habitat at both sites is degraded and dominated by nonnative vegetation. Descriptions of the two known sites follow:

(A) Kaena Point NAR: Between 1998 and 2008, *Hylaeus anthracinus* was collected at Kaena Point, which is located on Oahu's northwest-most point (Daly and Magnacca 2003, p. 55; Sahli, University of Hawaii at Manoa, pers. comm. 2008). Kaena Point contains the best intact native coastal habitat on Oahu, and is an excellent example of that type of ecosystem in the Northwestern Hawaiian Islands. It provides habitat for nesting seabirds, monk seals, native plants, and other native species (Magnacca 2007a, p. 181). The primary activities within this NAR include recreation, hiking, nature study, education, and the observation of wildlife (DLNR 2007, p. 20). While illegal off-road driving was once a concern, a physical barrier is now in place that prevents vehicular access, and native vegetation is regenerating and being restored by the Kaena Point Ecosystem Restoration Project (DLNR 2007, p. 20; Magnacca 2007a, p. 181). In partnership with several agencies including the Service, the DLNR is building a predator-proof fence to prevent nonnative species, such as cats and dogs that threaten nesting seabirds, from entering 59 ac (24 ha) of coastal habitat within Kaena Point NAR (*http://www.state.hi.us/dlnr/dofaw/kaena/index.htm*).

(B) Mokuauia (Goat Island): From the lack of records, it appears Perkins and other early naturalists did not search Mokuauia or Oahu's other offshore islets for yellow-faced bees. Recently, *Hylaeus anthracinus* was found on this islet by Service biologists during general surveys of the islet (S. Plentovich, Service, pers. comm. 2008). Mokuauia, an offshore islet in Laie Bay located on Oahu's northeast coast, encompasses 13 ac (5.3 ha) and reaches a maximum elevation of 15 ft (4.5 m). The entire islet is a State Seabird Sanctuary and is managed by the State's Department of Forestry and Wildlife (DOFAW). The entire islet was designated as critical habitat for the endangered plant *Sesbania tomentosa* in 2003, and the DOFAW is actively restoring native vegetation and controlling nonnative species. Mokuauia is easily accessed by the public and is a popular destination for small boats, kayaks, and swimmers on weekends.

Lanai

Hylaeus anthracinus has not been observed on Lanai for over 100 years and is likely extirpated from this privately owned island. This species was not observed at any of the recently surveyed sites, including Manele Bay, where it was collected by Perkins in 1899 (Magnacca 2007a, p. 182; Magnacca, pers. comm. 2008a). However, other *Hylaeus* species were collected at seven of the eight locations surveyed (Daly and Magnacca 2003, pp. 217–229).

Summary of Hylaeus anthracinus Range and Distribution

Hylaeus anthracinus was historically known from numerous coastal and lowland dry forest habitats up to 2,000 ft (600 m) in elevation, on the islands of Hawaii, Lanai, Maui, Molokai, and Oahu. Currently, this species is known from a total of 13 sites in a few small patches of coastal and lowland dry forest habitat: one location on Kahoolawe, five locations on the island of Hawaii, two locations on Maui, three locations on Molokai, and two locations on Oahu. In addition, in 2004 a single individual of *H. anthracinus* was collected in montane dry forest habitat on the island of Hawaii. It is unknown if this collection was a single vagrant individual or from an established population. The lands on which *H. anthracinus* occurs are under a variety of jurisdictions, including private (*e.g.,* TNC), State (*e.g.,* DHHL, DOFAW, NARs, State Park, Seabird Sanctuary), and Federal (U.S. Army, NPS).

Specific Information on *Hylaeus assimulans*

Taxonomy and Description

Hylaeus assimulans was first described as *Nesoprosopis assimulans* (Perkins 1899, pp. 75, 101–102); *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). The species was most recently described as *Hylaeus assimulans* by Daly and Magnacca in 2003 (pp. 55–56). *Hylaeus assimulans* is distinguished by its large size relative to other coastal *Hylaeus* species and slightly smoky to smoky-colored wings. The male is black with yellow face marks, with an almost entirely yellow clypeus (lower face region) with additional marks on the sides that narrow dorsally (towards the top). The male also has brown appressed (flattened) hairs on the tip of the abdomen. The female is entirely black, large-bodied, and has no distinct punctuation on the abdomen (Daly and Magnacca 2003, p. 56).

Life History

The diet of the larval stage of *Hylaeus assimulans* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the female adult (Magnacca 2005b, p. 2). Likewise, the nesting habits of *H. assimulans* are not known, but because the species is genetically related to other ground nesting *Hylaeus* spp., it is thought to be a ground nester (Magnacca 2005b, p. 2).

Hylaeus assimulans adults have been observed visiting the flowers of *Lipochaeta lobata* (nehe) and its likely primary host plant, *Sida fallax* (Daly and Magnacca 2003, p. 58). *Hylaeus assimulans* appears to be closely associated with plants in the genus *Sida,* and studies thus far suggest this yellow-faced bee species may be more common where this plant is abundant (Daly and Magnacca 2003, pp. 58, 217; Magnacca 2007a, p. 183). In recent survey efforts, *H. assimulans* seems to be more common in dry forest at relatively higher elevations, which may be related to the abundance of *Sida* in the understory (Magnacca 2005b, p. 2). *Sida* spp. were less often found in coastal habitat. It is likely *H. assimulans* visits several other native plants, including *Acacia koa, Metrosideros polymorpha, Styphelia tameiameiae* (pukiawe), and species of *Scaevola* (naupaka) and *Chamaesyce* (akoko),

which are frequented by other *Hylaeus* species as well (Magnacca, pers. comm. 2008b).

Range and Distribution

Historically, *Hylaeus assimulans* was known from numerous coastal and lowland dry forest habitats up to 2,000 ft (610 m) in elevation on the islands of Lanai, Maui, and Oahu. There are no collections from Molokai, although it is likely *H. assimulans* also occurred there because all other species of *Hylaeus* known from Maui, Lanai, and Oahu also occurred on Molokai (Daly and Magnacca 2003, pp. 217–229). Between 1997 and 2008, surveys for Hawaiian *Hylaeus* were conducted in 25 sites on Kahoolawe, Lanai, Maui, Molokai, and Oahu. *Hylaeus assimulans* was absent from six of its historical localities on Lanai, Maui, and Oahu (Xerces Society 2009b, p. 4). *Hylaeus assimulans* was not observed at 19 other sites with potentially suitable habitat on Lanai, Maui, Molokai, and Oahu, including several sites from which other native *Hylaeus* species have been recently collected (Daly and Magnacca 2003, pp. 56, 217; Magnacca 2005b, p. 2; Magnacca 2007a, pp. 177, 181, 183).

Currently, *Hylaeus assimulans* is known from a few small patches of coastal and lowland dry forest habitat at one location on Kahoolawe, two locations on Lanai, and two locations on Maui (Daly and Magnacca 2003, p. 58; Magnacca 2005, p. 2). This species has likely been extirpated from Oahu because it has not been observed since Perkins' 1899 surveys and was not found during recent surveys of potentially suitable coastal habitat at Kaena Point, Makapuu, and Kalaeloa (Daly and Magnacca 2003, p. 217; Magnacca 2005, p. 2; H. Sahli, unpublished data).

Kahoolawe

Although not historically known from Kahaoolawe (Daly and Magnacca 2003, Magnacca, pers. comm. 2008a), *Hylaeus assimulans* was discovered in 1997 near the high cliffs of Kamohio Bay in the center of the southern coast of the island (Daly and Magnacca 2003, p 217). The species was absent from one other site on the island in lowland habitat on the east coast at Pali o Kalapakea where other *Hylaeus* species were collected (Daly and Magnacca 2003, pp. 217–229).

Lanai

On Lanai, Perkins found *Hylaeus assimulans* in low numbers within uninhabited coastal habitat at Awalua in northwest Lanai, and in the Koele mountains at an elevation of 2,000 ft (610 m) (Perkins 1899, p. 102). Between 1998 and 2006, seven sites with potentially suitable habitat on private lands, including Mt. Koele and Awalua, were surveyed, and *H. assimulans* was found only near Manele Road and Polihua Road in small pockets of native vegetation (Magnacca, pers. comm. 2008b). Descriptions of these sites follow:

(A) Manele Road: In 1999, *Hylaeus assimulans* was collected in lowland dry forest along Manele Road at 600 ft (180 m) in elevation, north of Manele Beach in southern Lanai (Daly and Magnacca 2003, p. 217). Researchers observed the canopy was dominated by invasive *Prosopis pallida* trees and the understory had a dense stand of *Sida fallax,* the likely primary host plant of *H. assimulans* (Magnacca, pers. comm. 2008b). However, with the exception of a few stunted plants at the roadside where moisture had accumulated, the rest of the stand of *Sida fallax* had senesced (reached maturity) or possibly died. Native plants at this site appeared to be drought-intolerant and probably did not provide consistent habitat for *Hylaeus* throughout the year (Magnacca 2007a, p. 183; Magnacca, pers. comm. 2008a).

(B) Polihua Road: In 1999, two specimens of *H. assimulans* were collected in lowland dry forest along Polihua Road at 1,000 ft in elevation (300 m) in central Lanai (Daly and Magnacca 2003, p. 58). Both sites are on private land, and we are unaware of any recent or current land management in these areas.

Maui

Perkins collected *Hylaeus assimulans* from coastal habitat at the Wailuku sand hills, and from an unknown site labeled ''Maui'' (Daly and Magnacca 2003, p. 58). Although other rare *Hylaeus* spp. were collected from the Waiehu dunes area during surveys conducted in 1999 and 2001, *H. assimulans,* as well as several other species once collected there by Perkins, were not found (Daly and Magnacca 2003, pp. 217–229; Magnacca, pers. comm. 2008a). Between 1998 and 2006, researchers surveyed six potentially suitable habitat locations island-wide, and *H. assimulans* was found within small pockets of native plants in only two of these sites (Daly and Magnacca 2003, p. 217; Magnacca, pers. comm. 2008a). However, researchers believe *H. assimulans* may exist in potentially suitable habitat in rugged and inaccessible portions of west Maui (Magnacca, in litt., 2010, p. 1). Descriptions of these two sites follow:

(A) Lahainaluna: In 1999, *Hylaeus assimulans* was collected in dry lowland forest at 1,800 ft (550 m) in elevation on the west side of Maui. The site is with the State's West Maui NAR. Established in 1986, the NAR's management plan calls for the control and removal of feral ungulates, and the control of selected priority invasive plant species (*http://hawaii.gov/dlnr/dofaw/nars/reserves/maui/west-maui*).

(B) Waikapu: In 2000, researchers collected *Hylaeus assimulans* in lowland dry shrubland dominated by the native shrub, *Dodonaea viscosa* (aalii) at 400 ft (120 m) elevation in Waikapu Valley, which is south of Iao Valley on the east side of west Maui (Daly and Magnacca 2003, p. 217). The 10,000-square ft (.09-square-ha) site is privately owned and surrounded by a fence to exclude nonnative axis deer (*Axis axis*). The fence was built in the mid-1980s by the Native Hawaiian Plant Society, and is currently managed by inspecting the fence for breaks; removing nonnative, invasive weeds; and collecting seeds of native plants for propagation. There have been two major fires in the past 5 years in the vicinity of the fenced area, although neither fire has burned within the enclosed area (H. Oppenheimer, Plant Extinction Prevention Program, pers. comm. 2008).

Between 1997 and 2007, *Hylaeus assimulans* was not collected during surveys of potentially suitable habitat at other locations on Maui where other rare *Hylaeus* species were collected, including lowland dry forest habitat in Kanaio NAR and coastal habitat at Manawainui Gulch (Daly and Magnacca 2003, pp. 217–229; Magnacca, pers. comm. 2008a).

Oahu

Perkins found *Hylaeus assimulans* to be widespread but not relatively abundant on Oahu (Magnacca 2005b, p. 2). His Oahu collection sites included Honolulu (Magnacca, pers. comm. 2008a), the Kaala mountains, the Waianae Mountains, and the Waianae coast (Perkins 1899, p. 102; Daly and Magnacca 2003, p. 58). There are also specimens collected by Perkins from unknown locations labeled ''Oahu'' and ''w. coast, near sea level'' (Daly and Magnacca 2003, p. 58).

Hylaeus assimulans was not found during surveys conducted between 1998 and 2008, including surveys at one historical location (Daly and Magnacca 2003, pp. 58, 217). Although *H. anthracinus* was recently found on Mokuania (see *Hylaeus anthracinus* Range and Distribution), *H. assimulans* was not found during surveys of potentially suitable habitat on this off-shore islet (S. Plentovich, Service, pers. comm. 2008). The absence of *H. assimulans* from potentially suitable

coastal habitat on Oahu suggests it has likely been extirpated from this island (Daly and Magnacca 2003, p. 58; H. Sahli, unpublished data).

Summary of *Hylaeus assimulans* Range and Distribution

Hylaeus assimulans was historically known from numerous coastal and lowland dry habitats up to 2,000 ft (610 m) in elevation, on the islands of Lanai, Maui, and Oahu. Currently, this species is found in a few small patches of coastal and lowland dry forest habitat in five locations on Kahoolawe, Lanai, and Maui. The lands on which *H. assimulans* occurs are under private and State (DLNR and KIRC) ownership.

Specific Information on *Hylaeus facilis*

Taxonomy and Description

Hylaeus facilis is a member of the *H. difficilis* species group, and is closely related to *H. chlorostictus* and *H. simplex. Hylaeus facilis* was first described as *Prosopis facilis* by Smith in 1879 (Daly and Magnacca 2003, p. 80), based on a specimen erroneously reported from Maui. According to Blackburn and Cameron (1886 and 1887), the species' type locality was Pauoa Valley on Oahu (Daly and Magnacca 2003, p. 80). The species was later transferred to the genus *Nesoprosopis* (Perkins 1899, pp. 75, 77). *Nesoprosopis* was subsequently reduced to a subgenus of *Hylaeus* (Meade-Waldo 1923, p. 1). The species was most recently recognized by Daly and Magnacca (2003, p. 80) as *H. facilis. Hylaeus facilis* is a medium-sized bee with smoky colored wings. The male has an oval yellow mark on its face that covers the entire clypeus (lower face region), and a narrow stripe beside the eyes, but is otherwise unmarked. The large, externally visible gonoforceps (paired lateral outer parts of the male genitalia) distinguish *H. facilis* from the closely related *H. simplex* (Daly and Magnacca 2003, p. 83). The female is entirely black and indistinguishable from females of *H. difficilis* and *H. simplex* (Daly and Magnacca 2003, pp. 81–82).

Life History

The diet of the larval stage of *Hylaeus facilis* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the adult female. The nesting habits of *H. facilis* have not been observed, but the species is thought to nest underground as do the closely related species *H. chlorostictus* and *H. simplex* (Daly and Magnacca 2003, p. 83; Magnacca 2005c, p. 2).

The native host plants of adult *Hylaeus facilis* are unknown, but it is likely this species visits several plants other *Hylaeus* species are known to frequent, including *Acacia koa, Metrosideros polymorpha, Styphelia tameiameiae, Scaevola* spp., and *Chamaesyce* spp. (Daly and Magnacca 2003, p. 11). *Hylaeus facilis* has also been observed visiting the nonnative *Tourneforia argentea* for nectar and pollen (Magnacca 2007a, p. 181).

Range and Distribution

Hylaeus facilis was historically known from Lanai, Maui, Molokai, and Oahu, in dry shrubland to wet forest, from coastal to montane habitat up to 3,281 ft (1,000 m) in elevation (Gagne and Cuddihy 1999, p. 93; Daly and Magnacca 2003, pp. 81, 83). Perkins (1899, p. 77) remarked *H. facilis* was among the most common and widespread *Hylaeus* species on Oahu and all of Maui Nui (Lanai, Maui, and Molokai) (Magnacca 2007a, p. 183). The abundance of specimens in the collections at the Bishop Museum in Honolulu demonstrates the historic prevalence of this species in a diverse array of habitats and elevations (Magnacca 2007a, p. 183). Although the species was widely collected within a diverse range of habitats historically, it probably prefers dry to mesic forest and shrubland (Magnacca 2005c, p. 2), which are increasingly rare and patchily distributed habitats (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66–67, 75; Magnacca 2005c, p. 2).

Hylaeus facilis has almost entirely disappeared from most of its historical range (Daly and Magnacca 2003, p. 7; Magnacca 2007a, p. 183). Between 1998 and 2006, 39 sites on Lanai, Maui, Molokai, and Oahu were surveyed, including 13 historical sites. *Hylaeus facilis* was absent from each of the 13 historical localities (Magnacca 2007a, p. 183) and was also not observed at 26 other sites with potentially suitable habitat, including many sites from which other native *Hylaeus* species have been recently collected (Daly and Magnacca 2003, pp. 7, 81–82; Magnacca 2007a, p. 183). Likely extirpated from Lanai, *H. facilis* is currently only known from two locations, one each on the islands of Molokai and Oahu (Daly and Magnacca 2003, pp. 81–82; Magnacca 2005c, p. 2). In addition, in 1990, a single individual was collected on Maui in a residential area near Makawao at 1,500 ft (457 m) in elevation. However, this site is an urbanized area devoid of native plants, and it is likely this collection was a single vagrant individual and not from an established population on Maui.

Lanai

Perkins (1899) described *Hylaeus facilis* as ''common'' at two Lanai locations. He noted *H. facilis* was collected from the Koele Mountains at 2,000 ft (610 m) in elevation. Researchers believe the collection locality was northwest of Puu Alii where the ridges are at an elevation of approximately 2,000 ft (600 m). The Puu Alii summit itself is 2,800 ft (850 m) in elevation, and less likely to be the site of Perkins' collection (Magnacca in litt. 2011, p. 36). Today this area contains mixed native and nonnative vegetation. Researchers collected three other species of *Hylaeus* in the same general area, along the Munro Trail and Kaiholena ridge in 1999 and 2001 (Daly and Magnacca 2003, pp. 217–229). Perkins' second collection site was in montane habitat at 3,000 ft (900 m) in elevation at Haalelepaakai in the ''summit mountains on Lanai'' (Daly and Magnacca 2003, p. 83). Researchers surveyed this area in 1999 and 2001, and were unable to find *H. facilis,* although they collected four other *Hylaeus* species (Daly and Magnacca 2003, pp. 217–229). *Hylaeus facilis* is likely extirpated from Lanai because it has not been relocated in over 100 years, and its potentially suitable habitat has been extensively surveyed (Magnacca 2007a, pp. 177, 183).

Maui

Perkins collected *Hylaeus facilis* from three different sites on Maui, including coastal habitat at the Wailuku sand hills (Waiehu dunes), montane mesic forest habitat on Haleakala, and lowland wet habitat in Iao Valley. Although other species of *Hylaeus* were collected from the Waiehu dunes in 1999 and 2001, *H. facilis,* as well as several other species collected by Perkins in the late 19th century, were absent (Daly and Magnacca 2003, pp. 217–229).

Perkins (1899) collected *Hylaeus facilis* in montane mesic forest habitat on Haleakala at an elevation of 5,000 ft (1,524 m) on Haleakala, in the Olinda area where he is known to have camped while surveying for and collecting insects (Evenhuis 2009, pp. 199–200). These native forests were once abundant in this area up to 6,000 ft (1,818 m) in elevation across the west slope of Haleakala, but have now been completely converted by agriculture and other land uses (Juvik and Juvik 1998, pp. 123–124). *Hylaeus facilis* and other species with similar habitat requirements (*e.g., H. difficilis, H. volcanicus*) are absent from the native,

wetter forest across the eastern slope of Haleakala (Daly and Magnacca 2003, pp. 219–221, 228–229).

Perkins also collected *Hylaeus facilis* in lowland wet habitat at an elevation of 2,000 ft (610 m) in Iao Valley in the west Maui Mountains (H. V. Daly, unpublished data). The terrain in Iao Valley is especially rugged and wet, and Perkins relied on assistants to collect specimens from this area (Liebherr and Polhemus 1997, p. 351). Even today the vegetation in this area is predominantly native (Liebherr and Polhemus 1997, p. 351).

Since the late 1960s, there have been only two collections of *Hylaeus facilis* on Maui, but neither is from a distinct population that can be relocated. One collection was made in 1967 (Daly and Magnacca 2003, p. 221; Magnacca 2005c, p. 2), but the location is unknown (Xerces Society 2009c, p. 7). In 1990, a single individual was collected at Kokomo at an elevation of 1,500 ft (457 m) near Makawao, in a residential area devoid of native plants (Daly and Magnacca 2003, p. 221). This individual may have been a straggler blown in from a different site altogether (Magnacca 2005c, p. 2). Researchers question whether any viable *H. facilis* populations still remain on Maui (Magnacca 2007a, pp. 183–184).

Molokai

Perkins collected *Hylaeus facilis* in three locations within montane mesic forest habitat in the east Molokai Mountains (Daly and Magnacca 2003, p. 83). These locations were probably between Makakupaia and the rim of Pelekunu Valley, where Perkins did most of his collecting (Liebherr and Polhemus 1997, p. 347). Makakupaia is located within TNC's Kamakou Preserve. Researchers have surveyed extensively in similar, high-elevation habitat near Perkins' collecting area, including Kamakou Road (3,200 ft (975 m)), Puu Kolekole (3,400 ft (1,040 m)), and Kawela Gulch (3,600 ft (2,000 m)), and found other *Hylaeus* species, but were unable to locate *H. facilis* (Daly and Magnacca 2003, pp. 217–229).

In 2005, researchers collected *Hylaeus facilis* in coastal habitat at Kuololimu Point, within Kalaupapa National Historical Park (KNHP) on the southeast coast of the Kalaupapa peninsula (Magnacca 2007b, pp. 44–45). This area, located on the east side of the peninsula, is largely rocky and devoid of vegetation, but contains scattered patches of native coastal vegetation similar to habitat at Ka Lae on the island of Hawaii (Magnacca 2007a, p. 181). The park is cooperatively managed by the NPS, and the State of Hawaii's DHHL, DLNR, DOH, and DOT (NPS 2006 (*http://www.nps.gov/kala/index.htm*)).

Oahu

Perkins collected *Hylaeus facilis* from six sites on Oahu (Daly and Magnacca 2003, p. 83). One site described by Perkins was coastal habitat in Honolulu. Although the exact location is unknown, Honolulu coastal habitat has been completely developed for urban land use and there is no potentially suitable coastal habitat remaining in Honolulu for *Hylaeus* species. Perkins also described collecting *Hylaeus* species from mountains in Honolulu, and although the exact locations are unknown, these sites are presumed to be near known sites where he collected, including Waiolani Ridge, Lanihuli Ridge, Nuuanu Valley, and Konahuanui (Liebherr and Polhemus 1997, p. 348). While these mountain areas are largely undeveloped, many are dominated by nonnative vegetation. Researchers have surveyed potentially suitable native habitat near Perkins' collection sites and found other species of *Hylaeus,* but not *H. facilis* (Daly and Magnacca 2003, pp. 217–229). Descriptions of the five remaining suitable habitats follow:

(A) Makaha Valley: Perkins (1899) collected *H. facilis* at an elevation of 3,000 ft (900 m) in the upper part of Makaha Valley, on Oahu's northwest side. There have been no surveys for *Hylaeus* in this area since Perkins' collections, but researchers have observed this area now lacks suitable *Hylaeus* habitat due to development, urbanization, and conversion of native habitat to nonnative vegetation (Magnacca, pers. comm. 2008c). Some of the upper reaches of Makaha Valley contain patches of native vegetation, but much of the native vegetation has been destroyed by brush fires (Liebherr and Polhemus 1997, p. 347).

(B) Mount Kaala: Perkins (1899) collected *Hylaeus facilis* at 2,000 ft (610 m) in elevation on Mt. Kaala, possibly within what is now Mt. Kaala NAR. This area is a mix of dry and mesic forest communities (DLNR 1990, p. 3), and is generally characterized as predominantly native vegetation (Liebherr and Polhemus 1997, p. 348). This area has not been extensively resurveyed for *Hylaeus* spp. because much of it is either inaccessible (due to either private or U.S. Army ownership), or too rugged in general, requiring a long and steep approach along the Dupont Trail on the north slope of Mt. Kaala.

(C) Waianae Mountains: Perkins (1899) collected *Hylaeus facilis* in the Waianae Mountains, ''upland from Waianae'', likely in dry lowland forest, although the exact location is unknown. In 2008, researchers surveyed potentially suitable habitat in the Waianae-Kaala Forest Reserve (FR), but did not find *H. facilis* (Magnacca, pers. comm. July 2008c).

(D) Tantalus: Perkins collected *Hylaeus facilis* in lowland mesic habitat on ''Tantalus'' (Liebherr and Polhemus 1997, p. 348), which today is in close proximity to the urban core of Honolulu. This area is a mix of residential development and undeveloped sites dominated by nonnative plants, including various species of *Phyllostachys* spp. (bamboo), *Acacia confusa* (Formosa koa), *Eucalyptus robusta* (swamp mahogany), and *Aleurites moluccana* (kukui) (USDA 2001 *https://soilseries.sc.egov.usda.gov/OSD_Docs/T/TANTALUS.html*). Habitat dominated by nonnative plants does not support viable populations of *Hylaeus,* and no species have been reported from this area since Perkins' collections despite more recent surveys in the few small, widely separated areas containing native plant habitat (Magnacca in litt. 2011, p. 41).

(E) Poamoho Trail: In 1975, *Hylaeus facilis* was collected in lowland wet forest at an unknown elevation along the Poamoho Trail in Oahu's Koolau Mountains. Located in central Oahu, the Poamoho Trail is part of the Na Ala Hele trail and access system, and is within the Ewa FR (DLNR 2008, p. 15). The land adjacent to the trail, including the access road to the forest reserve, is State (DOFAW) and privately owned. The Poamoho Trail traverses a public hunting area, and some of the land surrounding the access road is leased to the Army for training purposes (DLNR 2011—*https://hawaiitrails.ehawaii.gov/trail.php?TrailID=OA+08+007*). Access is only allowed on weekends and holidays, and by permit only. Dominant vegetation in the summit area includes the indigenous fern, *Dicranopteris linearis* (uluhe), *Acacia koa,* and *Metrosideros polymorpha* (DLNR 2011—*http://hawaiitrails.ehawaii.gov/trail.php?TrailID=OA+08+007*).

Summary of *Hylaeus facilis* Range and Distribution

At the end of the 19th century, *Hylaeus facilis* was known from numerous locations in coastal and lowland habitats, including lowland dry, mesic, and wet forest habitat on the islands of Lanai, Maui, Molokai, and Oahu. Currently, this species is only known from two locations, one each on the islands of Molokai and Oahu (Magnacca 2007a, p. 177), under State (DHHL, DLNR, DOFAW, DOH, DOT) and private (TNC and others)

ownership. Researchers question whether viable populations of this species remain on Maui because only two single individuals have been collected in the past 100 years.

Specific Information on *Hylaeus hilaris*

Taxonomy and Description

Hylaeus hilaris was first described as *Prosopis hilaris* by Smith in 1879 (Daly and Magnacca 2003, pp. 103–104), transferred to the genus *Nesoprosopis* 20 years later (Perkins 1899, pp. 75), and then *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). In 2003, Daly and Magnacca described the species as *Hylaeus hilaris* (Daly and Magnacca 2003, pp. 103–104). *Hylaeus hilaris* is distinguished by its large size (male wing length is 0.185 in (4.7 mm)) relative to other coastal *Hylaeus* species. The wings of this species are slightly smoky to smoky-colored, and it is the most colorful of the Hawaiian *Hyaleus* species. The face of the male is almost entirely yellow, with yellow markings on the legs and thorax, and the metasoma (middle portion of the abdomen) are usually predominantly red. Females are drably colored, with various brownish markings. As with other cleptoparasitic species (see *Life History* below), *H. hilaris* lacks the specialized pollen-sweeping hairs of the front legs (Daly and Magnacca 2003, pp. 9, 106). It is also one of only two Hawaiian *Hylaeus* species to possess apical (at the end or tip of a structure) bands of fine white hairs on the segments of the metasoma.

Life History

Most adult Hawaiian *Hylaeus* species consume nectar for energy; however, *Hylaeus hilaris* has yet to be observed actually feeding from flowers. *Hylaeus hilaris* and the four species related to it (*H. hostilis, H. inquilina, H. sphecodoides,* and *H. volatilis*) are known as cleptoparasites or cuckoo bees. The mated female does not construct a nest or collect pollen, but instead enters the nest of another species and lays an egg in a partially provisioned cell. Upon hatching, the cleptoparasitic larva kills the host egg, consumes the provisions, pupates, and eventually emerges as an adult. As a result of this lifestyle shift, *H. hilaris* bees have lost the pollen-collecting hairs other species possess on the front legs. Cleptoparasitism is actually quite common among bees, with approximately 25 percent of known bee species having evolved to become cleptoparasites. Among the world's bees, other than the Hawaiian *Hylaeus* group, no cleptoparasites are known from the family Colletidae (Daly and Magnacca 2003, p. 9).

The larvae of *Hylaeus hilaris* and their diet are unknown (Magnacca 2005d, p. 2); however, the species is known to lay its eggs within the nests of *H. anthracinus, H. assimulans,* and *H. longiceps* (Perkins 1913, p. lxxxi). Although the species has never been observed at flowers, *H. hilaris* adults presumably consume nectar as a food source (Michener 2000, pp. 26–37, 126). *Hylaeus hilaris* depends on a number of related *Hylaeus* host species for its parasitic larvae, and its population size is inherently much smaller than its host species (Magnacca 2007a, p. 181).

Range and Distribution

Hylaeus hilaris was historically known from coastal habitat on the islands of Lanai, Maui, and Molokai. It is believed to have occurred along much of the coast of these islands' as its primary hosts, *H. anthracinus, H. assimulans,* and *H. longiceps,* likely extended throughout this habitat. The majority of coastal habitat on these islands has either been developed or degraded, and is no longer suitable for *H. hilaris* (Liebherr and Polhemus 1997, pp. 346–347; Magnacca 2007, pp. 186–188). *Hylaeus hilaris* was absent from three of its historical population sites revisited by researchers between 1998 and 2006. It was also not observed at 10 additional sites with potentially suitable habitat where other native *Hylaeus* species have been recently collected (Daly and Magnacca 2003, pp. 103, 106).

First collected on Maui in 1879, *Hylaeus hilaris* has been collected only twice in the last 100 years, but as noted above, there is a gap of about 50 to 100 years between major collecting efforts. *Hylaeus hilaris* has recently been collected on two occasions: once in 1989 and again in 1999. On the islands of Lanai and Maui, the species was absent from each of its historical Perkins-era localities revisited between 1998 and 2006 (Magnacca 2007a, pp. 177, 181–82). Currently, the only known population of *H. hilaris* is located on TNC's Moomomi Preserve on Molokai (Daly and Magnacca 2003, pp. 103, 106; Magnacca 2005d, p. 2).

Lanai

Perkins (1899) collected *Hylaeus hilaris* in coastal habitat at Manele, on the southern coast of Lanai. This area is now both the site of the ferry landing from Lahaina, Maui, and a small boat harbor, and is in close proximity to a major resort. The area was surveyed in 1999, but researchers noted little native vegetation aside from *Scaevola sericea* and an absence of *Hylaeus* species. Additionally, the nonnative bee, *Lasioglossum impavidum* (no common name (NCN)), was found at the site. Three other potentially suitable locations were surveyed between 1999 and 2007 for *Hylaeus* species, but *H. hilaris* was not observed at these sites, despite the presence of *H. assimulans* and *H. longiceps,* a recorded host species (Daly and Magnacca 2003, p. 106; Magnacca 2007a, pp. 177, 181).

Most native coastal habitats are now severely degraded across the entire island, and it is believed *Hylaeus hilaris* has likely been extirpated (Magnacca 2005d, p. 2; Magnacca 2007a, p. 181). Although large areas of remote sandy beach on the north and east coasts remain to be thoroughly surveyed for *Hylaeus* species, those that have been inspected contain few native plants. Two of the three known host species of *H. hilaris* occur on Lanai, but all recent (*i.e.,* since 1999) collections have primarily been made in lowland dry forest habitat where *H. hilaris* has never been collected.

Maui

Perkins collected *Hylaeus hilaris* from three sites, including one now unknown site possibly south of Wailuku and simply labeled ''Maui,'' and two sites in coastal habitat at the Wailuku sand hills (an area noted as ''the sandy isthmus'') (Daly and Magnacca 2003, p. 106). In addition, in 1880, Reverend Thomas Blackburn collected *H. hilaris* from an unspecified location on the island (Daly and Magnacca 2003, p. 106). Although other rare *Hylaeus* species were collected from the Waiehu dunes in 1999 and 2001 (See *H. anthracinus Range and Distribution*), *H. hilaris,* as well as several other species once collected there by Perkins, was absent (Daly and Magnacca 2003, pp. 217–229).

All three known host species of *Hylaeus hilaris* occur on Maui. However, *H. anthracinus* and *H. assimulans* are currently known only from dry forest or shrubland, which are likely unsuitable habitat for *H. hilaris.* The third known host species, *H. longiceps,* occurs in the Wailuku sand hills (Magnacca 2007a, p. 182). In addition to its known historical sites, several other potentially suitable sites were surveyed between 1998 and 2006, but *H. hilaris* was not found at any of these sites, despite the presence of two of its known host species (Daly and Magnacca 2003, pp. 217–229; Magnacca 2007a, p. 177). Therefore, researchers believe it is likely *H. hilaris* has been extirpated from the island (Magnacca 2005d, p. 2).

Molokai

Although *Hylaeus hilaris* was never collected on Molokai by Perkins, in 1918, Fullaway (1918, p. 396) collected the species at an unspecified site. As on all of the Hawaiian Islands, most of the coastal habitat on Molokai is now dominated by nonnative vegetation. Currently, the only known population of *H. hilaris* occurs on the northwest coast within TNC's Moomomi Preserve. This site is part of a large area of windswept calcified dunes, some of which are dominated by native plants while other portions of the dunes are dominated by nonnative plant species. *Hylaeus anthracinus* and *H. longiceps,* both host species of *H. hilaris,* are presently known to occur in Moomomi Preserve (Magnacca 2007a, p. 181). Only two collections of *H. hilaris* have been made at Moomomi since it was discovered at this site in 1930. Both collections, 1989 and 1999, were of a single male. Dunes to the west of Moomomi Preserve are dominated by nonnative vegetation, and no species of *Hylaeus* have been collected from those areas. While *H. anthracinus,* one of the host species of *H. hilaris,* is currently known from the Kalapapa peninsula, *H. hilaris* has never been collected there.

Summary of *Hylaeus hilaris* Range and Distribution

Hylaeus hilaris was historically known from coastal habitat on the islands of Lanai, Maui, and Molokai. It is believed to have occurred along much of the coast of these islands' as its known hosts, *H. anthracinus, H. assimulans,* and *H. longiceps,* likely also occurred throughout coastal habitat on these three islands. Currently, *H. hilaris* is only known from one site on Molokai.

Specific Information on *Hylaeus kuakea*

Taxonomy and Description

Hylaeus kuakea was first described by Daly and Magnacca (2003, pp. 1, 125–1,127) from specimens collected in 1997 in the Waianae Mountains on Oahu. *Hylaeus kuakea* is a small, black bee with slightly smoky-colored wings. This species does not fit into any of the well-defined *Hylaeus* species groups. Its facial marks are similar to those of the *H. difficilis* group and to *H. anthracinus,* but it can be distinguished by its unusual ivory facial marking covering the clypeus (the lower face region). *Hylaeus kuakea* also resembles *H. anthracinus,* but has a denser, more distinct arrangement of setae (sensory hairs) on the head and generally narrower marks next to the compound eyes (Daly and Magnacca 2003, p. 125; Magnacca 2005e, p. 2). Only four adult male specimens have been collected; females have yet to be collected or observed.

Life History

The diet of the larval stage of *Hylaeus kuakea* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the adult female (Daly and Magnacca 2003, p. 9). The nesting habits of *H. kuakea* have not been observed, but the species is believed to be related to other wood-nesting Hawaiian *Hylaeus* species (Magnacca and Danforth 2006, p. 403).

The native host plants of the adult *Hylaeus kuakea* are unknown, but it is likely this species visits several plants other *Hylaeus* species are known to frequent, including *Acacia koa, Metrosideros polymorpha, Styphelia tameiameiae, Scaevola* spp., and *Chamaesyce* spp. (Magnacca 2005e, p. 2).

Range and Distribution

In 1997, researchers collected 2 male individuals of *Hylaeus kuakea* in lowland mesic forest at an elevation of about 1,900 ft (579 m) on Moho Gulch Ridge at the northern end of the State's recently acquired Honouliuli Preserve in the Waianae Mountains on Oahu. Researchers surveyed the middle and southern portions of the Preserve, but they did not find *H. kuakea,* although other species of *Hylaeus* are known from these areas. In 2010, researchers collected this species (two males), on the endangered plant *Chamaesyce herbstii* (akoko) in a remnant patch of diverse lowland mesic forest in Makaha Valley on Oahu's west side (Magnacca, in litt., 2010, p. 1). Phylogenetically, *H. kuakea* belongs in a species-group primarily including mesic forest-inhabiting species (Magnacca & Danforth 2006, p. 405).

Summary of *Hylaeus kuakea* Range and Distribution

Because the first collection of *Hylaeus kuakea* was not made until 1997, its historical range is unknown (Magnacca 2005e, p. 2; Magnacca 2007a, p. 184). Only four individuals (all males) of *H. kuakea* have been collected at two different sites in lowland mesic forest habitat in the Waianae Mountains on Oahu (Magnacca 2007a, p. 184; Magnacca, in litt., 2010, p. 1), and the species has never been collected in any other habitat type or area, including some that have been more thoroughly surveyed (Magnacca in litt., 2011, p. 49). Researchers have not exhaustively surveyed all potentially suitable lowland mesic forest areas due their remote and rugged locations, small size, and distant spacing among large areas of nonnative forest. Lowland mesic forest habitat is becoming increasingly rare and patchily distributed on Oahu (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66–67, 75).

Specific Information on *Hylaeus longiceps*

Taxonomy and Description

Hylaeus longiceps was first described in 1899 as *Nesoprosopis longiceps* (Perkins 1899, pp. 75, 98), and then *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). Daly and Magnacca (2003, pp. 133–134) most recently described the species as *H. longiceps. Hylaeus longiceps* is a small to medium-sized, black bee with clear to slightly smoky-colored wings. Its distinguishing characteristics are its long head and the facial marks of the male. The lower face of the male is marked with a yellow band that extends at the sides of the face in a broad stripe above the antennal sockets. The area above the clypeus (lower face region) is very long and narrow, and the scape (the first antennal segment) is noticeably twice as long as it is wide. The female is entirely black and unmarked (Daly and Magnacca 2003, p. 133).

Life History

The diet of the larval stage of *Hylaeus longiceps* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the female adult (Daly and Magnacca 2003, p. 9). The nesting habits of *H. longiceps* are unknown, but the species is thought to nest underground, as in other closely related species (Magnacca 2005f, p. 2).

Hylaeus longiceps adults have been observed visiting the flowers of a wide variety of native plants, including *Scaevola coriacea* (dwarf naupaka), *Sida fallax, Scaevola* spp., *Sesbania tomentosa, Myoporum sandwicense, Santalum ellipticum, Chamaesyce degeneri,* and *Vitex rotundifolia* (pohinahina) (Daly and Magnacca 2003, p. 135). It is also likely *H. longiceps* visits several plant species other *Hylaeus* species are known to frequently visit, including *Scaevola* spp., *Chamaesyce* spp., *Tournefortia argentea, Jacquemontia ovalifolia,* and *Sida fallax* (Magnacca 2005f, p. 2).

Range and Distribution

Hylaeus longiceps is historically known from coastal and lowland dry shrubland habitat up to 2,000 ft (610 m)

in elevation in numerous locations on the islands of Lanai, Maui, Molokai, and Oahu. Perkins (1899, p. 98) noted *H. longiceps* was locally abundant, and probably occurred historically throughout much of the leeward and lowland areas on Lanai, Maui, Molokai, and Oahu, as its host plants, *Sida fallax, Chamaesyce* spp., *Scaevola* spp., and *Jaquemontia ovalifolia,* occurred throughout these areas (Magnacca 2005f, p. 2). Most of the habitat in these areas has been either developed or degraded, and is no longer suitable for *H. longiceps* (Liebherr and Polhemus 1997, pp. 346–347; Magnacca 2007a, pp. 186–188).

Hylaeus longiceps is now restricted to small populations in small patches of coastal and lowland dry habitat on Lanai, Maui, Molokai, and Oahu (Magnacca 2005f, p. 2). Twenty-five sites that were either historical collecting localities for *H. longiceps* or contained potentially suitable habitat for this species were surveyed between 1997 and 2008. *Hylaeus longiceps* was observed at only six of the surveyed sites: three sites on Lanai and one site each on the islands of Maui, Molokai, and Oahu. Only one historical location, Waieu dunes on Maui, still supports a population of *H. longiceps* (Daly and Magnacca 2003, p. 135).

Lanai

Perkins (1899) collected *Hylaeus longiceps* at Manele, and other unspecified localities (labeled ''Lanai''). Between 1999 and 2001, researchers surveyed seven sites for *Hylaeus* species, and were unable to find *H. longiceps* at Manele Bay, although other rare *Hylaeus* species were observed there (Daly and Magnacca 2003, pp. 217–229). In addition, researchers did not find *H. longiceps* at three other sites within potentially suitable lowland dry habitat, including the Kahue unit of the privately owned Kanepuu Preserve, Garden of the Gods, and the Munro Trail/Kaiholena area of the Koele mountains (Daly and Magnacca 2003, pp. 217–229). *Hylaeus longiceps* is now known only from very small pockets of native vegetation in three locations on private land, including lowland dry forest habitat at Kahue and Polihua Road, and coastal habitat at Shipwreck Beach. Descriptions of these three locations follow:

(A) Kahue and Polihua Road: In 1999, Magnacca collected *Hylaeus longiceps* in lowland dry forest at Kahue (south of Kanepuu Preserve) at an elevation of 1,400 ft (427 m) (Daly and Magnacca 2003, p. 135). Researchers also surveyed the Kanepuu Preserve for *H. longiceps,* but were unable to find this species. In 1999, researchers collected *H. longiceps* in lowland dry forest at 1,000 ft (300 m) in elevation, along Polihua Road in central Lanai (Daly and Magnacca 2003, p. 135).

(B) Shipwreck Beach: Although he did not collect *Hylaeus longiceps* at Shipwreck Beach, Perkins collected other species of *Hylaeus* at Awalua, about 4 miles to the west (Daly and Magnacca 2003, p. 58). In 2001, researchers collected *H. longiceps* in native, coastal habitat at Shipwreck Beach (Daly and Magnacca 2003, p. 135). Shipwreck Beach is a popular tourist site on Lanai and accessible by four-wheel drive vehicles.

Maui

Perkins (1899) collected *Hylaeus longiceps* at the Wailuku sand hills (Waiehu Dunes) and on Haleakala. In addition, some of his specimens were collected from unknown localities labeled ''Maui.'' Perkins collected *H. longiceps* in dry forest habitat at an elevation of 2,000 ft (610 m) on Haleakala, probably near the towns of Pukalani or Makawao, where he stopped on his way to Wailuku (Daly and Magnacca 2003, p. 135). Native dry forests that supported populations of *Hylaeus* were common in lowland areas when Perkins collected, but this habitat has been greatly reduced and fragmented.

Hylaeus longiceps is now known from only one Maui location, at the Wailuku sand hills (Waiehu dunes). Between 1999 and 2001, a total of seven specimens were collected in native habitat in the northern portion of the dunes (Daly and Magnacca 2003, p. 224). Researchers surveyed for, but did not find, *H. longiceps* in the southern (Kahului) portion of the dunes (Daly and Magnacca 2003, p. 224).

Hylaeus longiceps was not found in five other sites on Maui surveyed between 1999 and 2001 (Daly and Magnacca, pp. 217–229). One historical site, in dry forest habitat on the slopes of Haleakala, has been developed and is overgrown with nonnative, invasive plants (Magnacca, pers. comm., 2008f). *Hylaeus longiceps* was absent from four sites (Kanaio NAR, Lahainaluna, Manawainui Gulch, and Waikapu near Kaohonua) with potentially suitable habitat where other *Hylaeus* species with similar habitat requirements were recently collected (Daly and Magnacca 2003, pp. 217–229).

Molokai

Perkins (1899) collected *Hylaeus longiceps* at Kaunakakai, and at unknown locations labeled ''Molokai coast and plains,'' the ''west end'' [of the island], and the ''Molokai Mountains.'' Although Kaunakakai is the primary urban area on Molokai, researchers surveyed this area, noting any former *Hylaeus* habitat has been lost to urban development and nonnative, invasive plants (Magnacca, pers. comm., 2008f). Most coastal habitat on the west end of Molokai, with the exception of TNC's Moomomi Preserve, has been degraded and converted to nonnative, invasive plants (Magnacca, pers. comm., 2008f).

Researchers surveyed a total of six sites on Molokai over the last several years for *Hylaeus longiceps,* and observed 8 individuals at Moomomi Preserve (in 1999 and in 2001) (Daly and Magnacca 2003, p. 135). *Hylaeus longiceps* was notably absent from three sites on the Kalaupapa peninsula (Kuololimu Point, Hoolehua Beach, and Kaupikiawa), where other *Hylaeus* species have been recently collected (Daly and Magnacca 2003, pp. 217–229). Researchers were unable to find *H. longiceps* in sand dune habitat near the Kaluakoi Resort on Molokai's northwest coastline (Magnacca, pers. comm., 2008f).

Oahu

Perkins (1899) collected *Hylaeus longiceps* from only one site, in a coastal area of southwest Waianae. In 1999, 2000, and 2002, researchers found *H. longiceps* in coastal habitat at the State's Kaena Point NAR (Daly and Magnacca 2003, p. 224). Researchers did not find *H. longiceps* during surveys conducted at other coastal sites with potentially suitable habitat, including Makapuu in 1999, and Kalaeloa in 2002. Although both areas contain vegetation similar to the vegetation in the Kaena Point NAR, albeit more degraded, no species of *Hylaeus* were observed in these areas (Daly and Magnacca 2003, pp. 217–229; Magnacca, pers. comm., 2008f).

Summary of *Hylaeus longiceps* Range and Distribution

Hylaeus longiceps was historically known from numerous coastal and lowland dry forest locations up to 2,000 ft (600 m) in elevation on the islands of Lanai, Maui, Molokai, and Oahu. Currently, *H. longiceps* is restricted to a total of six populations in small patches of coastal and lowland dry forest habitat: three sites on Lanai and one site each on the islands of Maui, Molokai, and Oahu (Magnacca 2005f, p. 2). The lands on which *H. longiceps* occurs are under a variety of jurisdictions including private (*e.g.,* TNC) and State (NARS).

Specific Information on *Hylaeus mana*

Taxonomy and Description

Hylaeus mana was first described by Daly and Magnacca (2003, pp. 135–136) from four specimens collected in 2002 on the leeward side of the Koolau Mountains on Oahu. This species is an extremely small, gracile (gracefully slender) black bee with yellow markings on the face. The smallest of all Hawaiian *Hylaeus* species, *H. mana* is a member of the *Dumetorum* species group. The face of the male is largely yellow below the antennae, extending dorsally in a narrowing stripe. The female's face has three yellow lines, one against each eye, and a transverse stripe at the apex of the clypeus (lower face region). The female's other markings are the same as the male's (Daly and Magnacca 2003, p. 135). *Hylaeus mana* can be distinguished from *H. mimicus* and *H. specularis,* species with overlapping ranges, by its extremely small size, the shape of the male's genitalia, the female's extensive facial marks, and a transverse rather than longitudinal clypeal marking (Daly and Magnacca 2003, p. 138).

Life History

The diet of the larval stage of *Hylaeus mana* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the adult female (Daly and Magnacca 2003, p. 9). The nesting habits of *H. mana* are not well known, but it is assumed the species is closely related to other wood-nesting Hawaiian *Hylaeus* species (Magnacca 2005g, p. 2; Magnacca and Danforth 2006, p. 403).

Adult specimens of *Hylaeus mana* were collected while they visited flowers of *Santalum freycinetianum* var. *freycinetianum* (iliahi, sandalwood), a native Hawaiian plant found only on Oahu and Molokai (Wagner *et al.* 1999, p. 1,221). It is likely *H. mana* visits several other native plant species, including *Acacia koa, Metrosideros polymorpha, Styphelia tameiameiae, Scaevola* spp., and *Chamaesyce* spp. (Magnacca 2005g, p. 2).

Range and Distribution

Hylaeus mana is only known from lowland mesic forest located along the Manana Trail in the Koolau Mountains on Oahu, at an elevation of about 1,400 ft (430 m). Few *Hylaeus* bees have been found in this type of *Acacia koa*-dominated, lowland mesic forest on Oahu (Daly and Magnacca 2003, p. 138). This type of forest is increasingly rare and patchily distributed on Oahu (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66–67, 75).

The Manana Trail is part of the Na Ala Hele Hawaii Statewide Trail and Access System (DLNR 2007), and is located within the State's Ewa FR. Six miles in length, the beginning of the Manana Trail is dominated by nonnative plant species, but leads into an area of native forest where *Acacia koa, Metrosideros polymorpha,* and *Scaevola* spp. are common (DLNR 2011—*http://hawaiitrails.ehawaii.gov/trail.php?TrailID=OA+09+008).*

Summary of Hylaeus mana Range and Distribution

Because the first collection of *Hylaeus mana* was made in 2002, its historical range and current distribution, other than the collection on Manana Trail, are unknown at this time (Magnacca 2005g, p. 2). Additional surveys in potentially suitable habitat may reveal additional populations elsewhere on Oahu (Magnacca 2007a, p. 184). However, the extreme rarity of this species, its absence from nearby sites, and the fact it was not discovered until very recently, suggests very few populations remain (Magnacca 2005g, p. 2).

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the seven species of Hawaiian yellow-faced bees in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats, we must look beyond the exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act.

Factor A. Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range

Degradation and loss of coastal and lowland habitat used by *Hylaeus* bees on all of the main Hawaiian Islands is the primary threat to these seven species (Cuddihy and Stone 1990, pp. 60–61; Daly and Magnacca 2003, pp. 55, 173; Magnacca, pers. comm. 2010). Coastal and lowland habitats have been severely altered and degraded, partly because of past and present land management practices, including agriculture, grazing, and urban development; the deliberate and accidental introductions of nonnative animals and plants; and recreational activities. In addition, fire is a potential threat to the habitat of these seven species in some locations.

Habitat Destruction and Modification by Urbanization and Land Use Conversion

Destruction and modification of *Hylaeus* bee habitat by urbanization and land use conversion leads to the direct fragmentation of foraging and nesting habitat of these species. In particular, because native host plant species are known to be essential to the yellow-faced bees for foraging of nectar and pollen, any further loss of this habitat may endanger their long-term chances for conservation and recovery. Additionally, conversion and modification of the seven yellow-faced bees' habitat is also likely to further exacerbate the introduction and spread of nonnative plants into and within these areas (see *Habitat Destruction and Modification by Nonnative Plants* section below).

Coastal Habitat

Native coastal habitat is one of the rarest habitats on the main Hawaiian Islands (Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, and Oahu) (Wagner *et al.* 1999, pp. 45, 54; Cuddihy and Stone 1990, pp. 94–95; Magnacca 2007, p. 180). Coastal habitat is highly valued for development, popular for recreation, typically dry on both the windward and leeward sides of the islands, vulnerable to fire, and especially susceptible to invasion by nonnative plants. Increased access to coastal areas, and resulting habitat disturbance, has been facilitated by development, road-building, and past agricultural activities (Cuddihy and Stone 1990, pp. 94–95). The native

coastal habitat that remains is in small remnant patches, and most of these remnants have been overtaken by invasive plant species and have relatively low diversity (Cuddihy and Stone 1990, pp. 94–95) (see *Habitat Destruction and Modification by Nonnative Plants* section below). Most of the coastal areas of the main Hawaiian Islands now lack significant amounts of native plants suitable for foraging by *Hylaeus,* other than *Scaevola sericea,* which alone cannot support *Hylaeus* populations (Magnacca 2007a, p. 187). The restricted and isolated nature of coastal habitat places species that depend on these areas even more at risk for a variety of reasons, including but not limited to their increased susceptibility to random events (*e.g.,* hurricanes and wildfire), the reduced range of native plants including host plants, and the reduced number of suitable sites for species to expand their range (Sakai *et al.* 2002, p. 291).

Five species of Hawaiian yellow-faced bees (*Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris,* and *H. longiceps*) were once widespread and common in coastal habitat (Perkins 1912, p. 688) throughout the main Hawaiian Islands (see Table 1 above), with the exception of Kauai. These five species are now absent from all of Perkins' coastal collection localities (Kealakekua Bay and Keei and the urban area near Kona on the island of Hawaii; the Awalua area on Lanai; the Wailuku sand hills area on Maui; the northwest dunes and Kaunakakai areas on Molokai; and Waikiki, the Waianae area, and the Honolulu mountains on Oahu) (Daly and Magnacca 2003, pp. 217–229), although they have recently been collected in disparate coastal habitat on one or more of the islands of Hawaii, Kahoolawe, Lanai, Maui, Molokai, and Oahu (Daly and Magnacca 2003, pp. 217–229).

Lowland Dry Habitat

Lowland dry forests and shrublands have been heavily impacted by urbanization and conversion to agriculture or pasture throughout the Hawaiian Islands, with the estimated loss of more than 90 percent of dry forests and shrublands (Bruegmann 1996, p. 26; Juvik and Juvik 1998, p. 124). Less than 1 percent of lowland dry forest and shrubland remains on Oahu, Molokai, and Lanai; less than 2 percent remains on Maui; and less than 17 percent remains on Hawaii Island (Sakai *et al.* 2002, p. 296). Without greater conservation and restoration efforts, we believe the remaining lowland dry forest and shrublands, which were once abundant and perhaps the most diverse of all Hawaiian habitat types (Medeiros 2006, p. 1), could completely disappear due to continued development and other land use conversion, compounded by the effects of nonnative species, wild fire, and stochastic events (see following sections on *Habitat Destruction and Modification by Nonnative Plants;* by *Nonnative Ungulates;* by *Fire;* by *Recreational Activities;* by *Hurricanes and Drought;* and by *Climate Change*) (Cabin *et al.* 2000, p. 449).

Four species (*Hylaeus anthracinus, H. assimulans, H. facilis,* and *H. longiceps*) were once widespread (*i.e.,* there were several populations across two or more islands) and found within lowland dry habitat on several islands, including Hawaii, Lanai, Maui, Molokai, and Oahu. However, these species have not been observed during recent surveys from their historical population sites on these islands (Magnacca 2005a, b, c, f, pp. 1–2). Five of the seven *Hylaeus* bee species (*Hylaeus assimulans, H. facilis, H. kuakea, H. longiceps,* and *H. mana*) are most often found in dry and mesic forest (see discussion below) and shrubland habitat (Daly and Magnacca 2003, p. 11), and the greatest proportion of endangered or at-risk Hawaiian plant species are also limited to these same habitats; 25 percent of Hawaiian listed plant species are from dry forest and shrubland alone (Sakai *et al.* 2002, pp. 276, 291, 292). According to Magnacca (2007, pp. 186–187), lowland dry and mesic forests now support less-diverse *Hylaeus* communities because many native plants used for foraging are extirpated from these habitats.

Lowland Mesic Habitat

Hawaii's lowland mesic forest habitat was once abundant and considered the most diverse (in terms of number of species) of all Hawaiian forest types (Rock 1913, p. 9). Lowland mesic forest habitat is now very rare, and has been converted to pasture, military use, agricultural use, or lost to urbanization. Development and land use conversion is ongoing (Cuddihy and Stone 1990, p. 61; Magnacca 2007, p. 187; Wagner *et al.* 1999, p. 75). Fire has also negatively impacted this habitat type and remains a significant threat (see *Habitat Destruction and Modification by Fire* section below).

Historically, *Hylaeus facilis* was found in a wide variety of habitats including lowland mesic forest on Lanai, Maui, and Oahu and montane mesic habitat on Molokai. However, this species no longer occurs in these habitats on any of these four islands. *Hylaeus kuakea* and *H. mana* are known from a total of three locations in lowland mesic forest habitat on the island of Oahu. Because we lack information on the historical range of *H. kuakea* and *H. mana* (they were only discovered relatively recently), we are unable to determine the extent of habitat loss these two species have experienced. However, because the extent and the quality of lowland mesic forest has been reduced throughout the Hawaiian Islands, it is reasonable to conclude *H. kuakea* and *H. mana* now have less habitat because of urbanization and land use conversion.

Lowland Wet Habitat

Native lowland wet forests were once one of the dominant ecosystem types in lowland areas on the main Hawaiian Islands (Wagner *et al.* 1999, p. 45). Most of the original loss of this habitat type was due to agricultural uses in the 18th and 19th centuries, and many remaining areas were overtaken by aggressive nonnative plant species such as *Psidium cattleianum* (strawberry guava), nonnative grasses such as *Brachiaria mutica* (California grass), and *Rubus* spp. (*e.g.,* prickly Florida blackberry, thimbleberry). Remnants of native lowland wet forest can be found in rocky or steep terrain, such as on some peaks and summit ridges on Oahu, Molokai, and West Maui (Cuddihy and Stone 1990, p. 105). Although these remaining remote and remnant native lowland areas are now less likely threatened by land use conversion, they remain very threatened by the impacts of nonnative plants (see *Habitat Destruction and Modification by Nonnative Plants* section below). Furthermore, the original loss of lowland and montane wet forest habitat on Oahu, Lanai, Maui, and Molokai was likely a contributing factor to the decline of *H. facilis,* a species now known only from coastal habitat on Molokai and wet forest habitat on Oahu's Poamoho Trail. Researchers believe the site on Oahu likely once had more open understory and the presence of *H. facilis* in this wet forest habitat represents an outlier or residual population (Perkins 1899, p. 76; Liebherr and Polhemus 1997, p. 347).

In summary, destruction and modification by urbanization and land use conversion of the coastal and lowland habitat of the seven *Hylaeus* bees is continuing, and is expected to continue reducing and fragmenting the remaining habitat available to the yellow-faced bees in the future, endangering the species' long-term chances for conservation and recovery. Because of the decreased amount of suitable native coastal and lowland habitat remaining in the Hawaiian

Islands and the continued conversion of these native habitats by development, road building, or agriculture, we conclude the ongoing habitat loss and land modification is a significant ongoing threat to *H. anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana.*

Habitat Destruction and Modification by Nonnative Plants

Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices, including ranching, agricultural development, and the deliberate introduction of nonnative plants and animals (Cuddihy and Stone 1990, pp. 27, 58). The original native flora of Hawaii (species that were present before humans arrived) consisted of about 1,000 taxa, 89 percent of which were endemic (species that occur only in the Hawaiian Islands). Over 800 plant taxa have been introduced from elsewhere, and nearly 100 of these have become pests (*e.g.,* injurious plants) in Hawaii (Smith 1985, p. 180; Cuddihy and Stone 1990, p. 73; Gagne and Cuddihy 1999, p. 45). Some of these plants were brought to Hawaii by various groups of people, including the Polynesians, for food or cultural reasons. Beginning in the early 1900s, plantation owners (and the territorial government of Hawaii), alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral and domestic animals, introduced nonnative trees for reforestation and continued the practice through the late 1930s (Nature Conservancy of Hawaii 2003, p. 19). Ranchers intentionally introduced pasture grasses and other nonnative plants for agriculture, and sometimes inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Scott *et al.* 1986, pp. 361–363; Cuddihy and Stone 1990, p. 73).

Nonnative plants adversely impact native Hawaiian habitat, including that of the seven yellow-faced bees identified in this finding, by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering fire characteristics of native plant communities (for example, successive fires that burn farther and farther into native habitat, destroy native plants, and remove habitat for native species by altering microclimatic conditions to favor nonnative species), and ultimately converting native dominated plant communities to nonnative plant communities (Smith 1985, pp. 180–181; Cuddihy and Stone 1990, p. 74; D'Antonio and Vitousek 1992, p. 73; Vitousek *et al.* 1997, p. 6). Nonnative plants directly and indirectly affect the seven yellow-faced bees by modifying or destroying their terrestrial and riparian habitat and reducing food sources.

The spread of nonnative plant species is one of the primary causes of decline of the seven *Hylaeus* bee species, and a current threat to their existing populations because these bees depend closely on native vegetation for nectar and pollen. The bees are almost entirely absent from habitat dominated by invasive, nonnative vegetation (Sakai *et al.* 2002, pp. 276, 291; Daly and Magnacca 2003, p. 11; Liebherr 2005, p. 186). The native flora within most of lowland habitat in the Hawaiian Islands is being replaced by aggressive, nonnative plant species (Cuddihy and Stone 1990, pp. 73–74; Wagner *et al.* 1999, p. 52). Many native plant species communities that have been replaced by often monotypic communities of nonnative plants were once foraging resources for numerous species of *Hylaeus* bees (Cox and Elmqvist 2000, p. 1238; Daly and Magnacca 2003, p. 11; USFWS 1999, pp. 145, 163, 171, 180; USFWS 2008b, pp. 7, 9).

Many of the native plants that currently serve as foraging resources for the adults of the seven *Hylaeus* bee species are declining due to a lack of pollinators and competition with nonnative plants (Daly and Magnacca 2003, p. 11; USFWS 2008b, pp. 7, 9; Smith 1985, pp. 180–181; Cuddihy and Stone, 1990, p. 74; D'Antonio and Vitousek 1992, p. 73; Vitousek *et al.* 1997, p. 6), and are found only in very small populations (USFWS 1999, pp. 145, 163, 171, 180; Cox and Elmqvist 2000, p. 1,238). For example, *H. longiceps* and *H. anthracinus* are known to forage on the federally endangered plant *Sesbania tomentosa*. Both *H. longiceps* and *H. anthracinus* also visit *Chamaesyce celastroides* var. *kaenana,* a federally endangered plant endemic to coastal dry shrubland on Oahu (Koutnik 1999, p. 606; Daly and Magnacca 2003, pp. 55, 74). *Hylaeus longiceps* is also known to forage on the endangered *Scaevola coriacea* (USFWS 1999, p. 145; Daly and Magnacca 2003, pp. 55, 135). In addition, *H. anthracinus* has been collected from inside the fruit capsule of *Hedyotis coriacea*, a federally endangered dry forest plant, known from fewer than 200 individuals on the island of Hawaii (Center for Environmental Management of Military Lands, 2010). Several other widespread nonnative plant species threaten coastal habitats of the five Hylaeus species known from these areas. Understory and sub-canopy species include *Asystasia gangetica* (Chinese violet), *Atriplex semibaccata* (Australian saltbush), *Leucana leucocephala* (koa haole), *Pluchea indica* (Indian fleabane), *P. symphytifolia* (sourbush), and *Verbesina encelioides* (golden crown-beard) (DOFAW 2007, pp. 20–22, 54–58; HBMP 2008). Nonnative canopy species include *Prosopis pallida* (kiawe) (DOFAW 2007, pp. 20–22, 54–58; HBMP 2008), an invasive, nonnative, deciduous thorny tree (TNC 2009, p. 8). For example, in Moomomi Preserve on Molokai, which represents the only known location for *Hylaeus hilaris,* most of the sand dunes and areas adjacent to the preserve are entirely covered in *Prosopis pallida.* The narrow coastal strip in the Preserve itself is the only area that remains somewhat intact with native plant species (TNC 2008, p. 8; Magnacca in litt. 2011, p. 65). In addition, several nonnative grasses such as *Cenchrus ciliaris* (buffelgrass), *Chloris barbata* (swollen fingergrass), *Digitaria insularis* (sourgrass), and *Panicum maximum* (guinea grass) threaten the coastal habitats in which they are known to occur (DOFAW 2007, pp. 20–22, 54–58; HBMP 2008).

As noted in the Life History section, above, *Hylaeus* species almost exclusively visit native plants to collect nectar and pollen (Daly and Magnacca 2003, p. 11), pollinating those plants in the process (Sakai *et al.* 1995, pp. 2,524–2,528; Cox and Elmqvist 2000, p. 1,238; Sahli *et al.* 2008, p. 1). *Hylaeus* bees are very rarely found visiting nonnative plants for nectar and pollen (Magnacca 2007a, pp. 186, 188). Unpublished data on *Hylaeus* spp. pollen use (Magnacca in litt. 2011, p. 65) suggest only approximately 3 percent of pollen collected by yellow-faced bees (although not exclusively the seven *Hylaeus* species addressed in this finding) is from nonnative plant sources. These data do not include observations regarding yellow-faced bee use of *Tournefortia argentea,* which is a naturalized and relatively recent arrival to the Hawaiian Islands, as a pollen resource (Magnacca in litt. 2011, p. 65) (see additional information on this species below). Other than *Scaevola sericea,* native vegetation is lacking along most of the coastline of the main Hawaiian Islands. As *Hylaeus* spp. have not been observed at coastal sites where *Scaevola sericea* represents the only native plant species occurrence, researchers believe the yellow-faced bees are unable to survive on this species alone (Magnacca 2007, p. 187; Magnacca in litt. 2011, p. 65).

In summary, the spread of nonnative plants throughout the coastal and

lowland habitat of the seven *Hylaeus* bees represents a serious and ongoing threat to these species. Many of the native plant species being replaced by invasive, nonnative plants provide foraging resources (*e.g.* pollen, nectar) for *Hylaeus* bees, including these seven species. The best available information indicates these seven bee species do not characteristically forage on nonnative plants (Daly and Magnacca 2003, p. 13). Only 14 of 820 recent (1998 to 2010) *Hylaeus* spp. observations were on flowers of nonnative plant species; however, none of those observations involved the seven *Hylaeus* species addressed in this finding. We acknowledge those observations do not include records documenting *Hylaeus* spp. using *Tournefortia argentea* (another nonnative species). However, there are only 13 observations of *Hylaeus* spp. using this species, including four records for *H. anthracinus* and one record for *H. facilis* (Magnacca in litt. 2011, p. 66). Therefore, we conclude that the ongoing spread of nonnative plants into the habitats of the seven Hylaeus bees remains a significant threat due to manner in which nonnative plants alter and fragment habitat, increase the likelihood of fire, and attract nonnative insect species. This threat further endangers the species' long-term chances for conservation and recovery.

Habitat Destruction and Modification by Nonnative Ungulates

The presence of nonnative mammals, such as feral pigs (*Sus scrofa*), cattle (*Bos taurus*), goats (*Capra hircus*), and axis deer (*Axis axis*), is considered one of the primary factors underlying the alteration and degradation of native vegetation and habitat in the Hawaiian Islands (Stone 1985, pp. 262–263; Cuddihy and Stone 1990, pp. 60–66; 73 FR 73801). Beyond the direct effects of trampling and consuming native plants, nonnative ungulates contribute significantly to increased erosion, and their behavior (*i.e.,* rooting and moving across large areas) facilitates the spread and establishment of competing, invasive, nonnative plant species (Cuddihy and Stone 1990, p. 65). Feral pigs occur on all of the main Hawaiian Islands except Kahoolawe and Lanai (HEAR 1998; C. Kessler, USFWS, pers. comm. 2011); goats are found on all of the main Hawaiian Islands except Lanai (HEAR 1998); feral cattle are found on Hawaii and Maui (HEAR 1998); Mouflon sheep and hybrids are found on Hawaii and Lanai (Hawaii Conservation Alliance (HCA) 2007); and axis deer are found on Lanai, Maui, Molokai, and Oahu (HCA 2007). At least one endangered coastal and lowland plant species, *Sesbania tomentosa,* threatened by the browsing, trampling, and digging activities of nonnative ungulates (*e.g.,* axis deer, goats, and cattle), is a foraging source for *Hylaeus anthracinus* and *H. longiceps* (USFWS 1999, pp. 145, 163, 171, 180; Daly and Magnacca 2003, pp. 11, 13).

The State of Hawaii provides game mammal (*e.g.,* feral pigs, goats, and deer) hunting opportunities on State-designated public hunting areas on the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu (Hawaii Administrative Rules § 13–123–14–13–123–20; DLNR 1999). The State's management objectives for game animals ranges from maximizing public hunting opportunities (*e.g.,* ''sustained yield'') in some areas to removal by State staff, or their designees, in other areas (Hawaii Administrative Rules § 13–123). Several of the seven *Hylaeus* bees have populations in or adjacent to areas where terrestrial habitat may be manipulated for game enhancement and where game populations are maintained at certain levels for public hunting (Hawaii Administrative Rules § 13–123). Public hunting areas are predominantly not fenced, and game mammals have unrestricted access to most areas across the landscape, regardless of underlying land use designation. While fences are sometimes built to provide protection from game mammals to the natural resources within the fenced area, the current number and locations of fences are not adequate to prevent habitat destruction and degradation of the terrestrial habitat of the seven species of Hawaiian yellow-faced bees.

In summary, feral pigs, cattle, goats, and axis deer continue to alter and degrade native vegetation within *Hylaeus* habitat in the Hawaiian Islands. We believe these ungulates represent a significant and ongoing threat to the continued existence of the seven *Hylaeus* bees, endangering the species' long-term chances for conservation and recovery. Ungulates directly trample and consume native plants, including plants used for foraging by *H. anthracinus* and *H. longiceps.* The best available information indicates that other than the plant *Tournefortia argentea,* none of the seven *Hylaeus* bees use nonnative plants for foraging (Daly and Magnacca 2003, p. 13). While some specific areas throughout the State, including some *Hylaeus* spp. habitat sites, are managed to exclude the presence of or control ungulates, we are unaware of any plans to entirely eradicate or eliminate ungulates from the Hawaiian Islands. In addition, public hunting areas maintain populations of nonnative ungulates and often do not provide adequate fencing to prevent nonnative ungulates from negatively impacting the habitat of the seven yellow-faced bees. Therefore, the ongoing alteration and degradation of many of the native coastal and lowland habitat where these seven *Hylaeus* bees occur by ungulates is expected to further impact the bees' foraging and nesting habitat through the direct consumption and trampling of native plants, introduction and spread of nonnative plants, and increased erosion.

Habitat Destruction and Modification by Fire

Fire is a relatively new, human-exacerbated threat to native species and natural vegetation in Hawaii. The historical fire regime in Hawaii was characterized by infrequent, low severity fires, as few natural ignition sources existed (Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, pp. 395–397). Natural fuel beds were often discontinuous, with moderate to high rainfall in many areas on most islands. Fires inadvertently or intentionally ignited by the original Polynesians in Hawaii probably contributed to the initial decline of native vegetation in the drier plains and foothills. These early settlers practiced slash-and-burn agriculture that created open lowland areas suitable for the later colonization of nonnative, fire-adapted grasses (Kirch 1982, pp. 5–6, 8; Cuddihy and Stone 1990, pp. 30–31). Beginning in the late 18th century, Europeans and Americans introduced plants and animals that further degraded native Hawaiian ecosystems. Pasture areas and ranching, in particular, created highly fire-prone areas of nonnative grasses and shrubs (D'Antonio and Vitousek 1992, p. 67). Fires of all intensities, seasons, and sources are destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire can kill most native trees and shrubs in the burned area (D'Antonio and Vitousek 1992, p. 74). Although Vogl (1969) (in Cuddihy and Stone 1990, p. 91) suggests naturally occurring fires, primarily from lightning strikes, have been important in the development of the original Hawaiian flora, and many Hawaiian plants might be fire-adapted, Mueller-Dombois (1981) (in Cuddihy and Stone 1990, p. 91) points out most natural vegetation types of Hawaii would not carry fire before the introduction of nonnative grasses. Smith and Tunison (in Cuddihy and Stone 1990, p. 91) state native plant fuels typically have low flammability.

Fire represents a threat to the seven *Hylaeus* species in coastal, lowland dry,

and lowland mesic habitat. In addition, ordnance-induced fires have periodically occurred on Hawaii's military installations, including the Army's PTA, and are considered an ongoing threat to the montane dry forest habitat that supports *H. anthracinus* (The Center for Environmental Management of Military Lands 2002, Appendix 1 pp. 1–6; USFWS 2004, p. 110). Fire threatens the seven *Hylaeus* species by destroying the native plant species and communities on which the bees depend and opening up habitat for increased invasion by nonnative plants. Fire can destroy dormant seeds of native plants as well as the plants themselves. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native plant and animal species by altering microclimate conditions favorable to nonnative plants. Nonnative plant species most likely to be spread as a consequence of fire are those that (1) produce a high fuel load; (2) are adapted to survive and regenerate after fire; and (3) establish rapidly in newly burned areas. Grasses (particularly those that produce mats of dry material or retain a mass of standing dead leaves) that invade native forests and shrublands provide fuels that allow fire to burn areas that would not otherwise easily burn, including even the edges of wetter forests (Fujioka and Fujii 1980, in Cuddihy and Stone 1990, p. 93; D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122). Native woody plants may recover from fire to some degree, but fire tips the competitive balance toward nonnative species (National Park Service 1989, in Cuddihy and Stone 1990, p. 93).

For example, on a post-burn survey at Puuwaawaa on the island of Hawaii, an area of native *Diospyros* forest with undergrowth of the nonnative grass *Pennisetum setaceum,* Takeuchi noted ''no regeneration of native canopy is occurring within the Puuwaawaa burn area'' (Takeuchi 1991, p. 2). Takeuchi also stated, ''burn events served to accelerate a decline process already in place, compressing into days a sequence which would ordinarily have taken decades'' (Takeuchi 1991, p. 4). The author concluded that in addition to increasing the number of fires, the nonnative *Pennisetum* acted to suppress establishment of native plants after a fire (Takeuchi 1991, p. 6).

There have been several recent fires on Oahu that have impacted rare or endangered species in coastal, lowland dry, and mesic habitats. Between 2004 and 2005, wildfires burned more than 360 ac (146 ha) of mesic habitat in Honouliuli Preserve, home to more than 90 rare and endangered plants and animals, and located along the windward side of the Waianae Mountains (The Nature Conservancy, in litt. 2005). In 2006, a fire at Kaena Point State Park burned 60 ac (24 ha) and encroached on endangered plants in Makua Military Training Area. The area that burned in this fire is near the Kaena Point NAR, where two of the yellow-faced bees (*Hylaeus anthracinus* and *H. longiceps*) in this finding are still known to occur. In 2007, there was a significant fire in lowland dry and mesic habitat at Kaukonahua that crossed 12 gulches, eventually encompassing 5,655 ac (2,289 ha), negatively impacting seven endangered plant species. Occurrences of three of the species were extirpated as a result of the fire. The Kaukonahua fire also provided pathways for nonnative ungulates (cattle, goats, and pigs) to access previously undisturbed areas. This fire opened gaps in previously densely vegetated areas allowing the growth of the invasive grass *Panicum maximum* (guinea grass), which is also used as a food source by cattle and goats. An area infested by guinea grass burned, and the grass resprouted blades over 2 feet in length only 2 weeks after the fire (U.S. Army Garrison 2007, p. 3). In 2009, there were two smaller fires which burned 200 ac (81 ha) at Manini Pali (Kaena Point State Park), and 3.8 ac (1.5 ha) at Makua Cave (at the mouth of Makua Valley). These examples of recent fires illustrate nonnative grass invasion leads to grass/fire cycles that convert native vegetation to grassland (D'Antonia and Vitousek 1992, p. 77)

Several areas in the State of Hawaii, including some areas containing *Hylaeus* spp. habitat sites, are currently loosely addressed under fire management plans. For example, in 2003, the Army completed an Integrated Wildland Fire Management Plan (WFMP) for all of its Oahu training installations. This plan is currently being updated (U.S. Army 2009, pp. 4–73). The goal of the WFMP is to reduce the threat of wildfire that adversely affects listed and other rare species. Although none of the Oahu yellow-faced bees are known from military lands, at least one species, *H. kuakea,* occurs on lands roughly adjacent to military lands and which could be impacted by fires caused by military activities, or conversely, could benefit from activities to suppress and control origination of fires either on or adjacent to military lands.

Additionally, DOFAW maintains a fire management program tasked with fire suppression activities targeted toward the protection of watershed areas, forest reserves, public hunting areas, wildlife and plant sanctuaries, and NARS. Their activities include the maintenance of fire break roads, signage, and helicopter dip tanks; active fire control during fire outbreak; controlled burns when and where deemed necessary; fire training efforts, including education; and maintenance of a State fire management program Web site (*http://www.state.hi.us/dlnr/dofaw/fmp*). According to their Web site, DOFAW is involved in the protection of 3,360,000 acres Statewide, which is approximately 81percent of the State's land area.

In summary, while we are aware of fire management in some areas of the State, including some *Hylaeus* spp. habitat sites, there is evidence that the repeated outbreak of fire within Hawaii's native coastal, lowland dry, and lowland mesic forests often leads to the irrevocable conversion of native to nonnative habitat (*i.e.,* nonnative plant species). These nonnative habitats are unsuitable for nesting and foraging by the seven *Hylaeus* bees. Therefore, we conclude fire is a significant ongoing threat to the habitat of all seven species of *Hylaeus* bees in coastal, lowland dry, and lowland mesic habitat.

Habitat Destruction and Modification by Recreational Activities

Some of the best habitat areas for *Hylaeus* species are also popular recreational sites, particularly those areas located within coastal habitat (Magnacca 2007a, p. 180). Suitable remaining habitat for *H. anthracinus* and *H. longiceps* are also popular hiking areas, including coastal sites such as Kaena Point (on Oahu); the Mahaiula section of Kekaha Kai State Park, Makalawena, Mokuauia, and Kalauna Bay (on the island of Hawaii); and Kahu, Polihua Road, and Shipwreck Beach on Lanai. Human impacts at recreational sites can include removal or trampling of vegetation on or near trails and the compaction of vegetation by off-road vehicles (Magnacca 2007a, p. 180). None of these areas, however, are known to be currently impacted by recreational activities (Magnacca pers. comm. 2010).

In summary, while trampling and compaction of vegetation from human activities may negatively impact the habitat of some populations of the seven *Hylaeus* bees, we have no basis to conclude these impacts would be at a scale that represents a threat to the seven Hawaiian yellow-faced bees. While some areas, particularly coastal sites, are undoubtedly popular recreational sites, we believe this is a local rather a rangewide problem for each of the seven species. Therefore, we

conclude that recreational activities are not a threat to the seven yellow-faced bees at this time.

Habitat Destruction and Modification by Hurricanes and Drought

Stochastic (random, naturally occurring) events, such as hurricanes and drought, can alter or degrade the habitat of Hawaiian *Hylaeus* bees directly by modifying and destroying native coastal and lowland dry and mesic habitats (*e.g.,* by mechanical damage to vegetation). Indirect effects include creating disturbed areas conducive to invasion by nonnative plants, which out-compete the native plants used by the bees for foraging of nectar and pollen. We presume these events also alter microclimatic conditions (*e.g.,* opening the tree canopy leading to an increase in habitat temperature, soil erosion, and decreasing soil moisture) so that the habitat no longer supports the native host plants necessary to the *Hylaeus* bees for nectar and pollen foraging, as well as nesting.

Hurricanes affecting Hawaii were only rarely reported from ships in the area from the 1800s until 1949. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands, 5 of which caused serious damage (Businger 1998, pp. 1–2). In November 1982, Hurricane Iwa struck the Hawaiian Islands, with wind gusts exceeding 100 miles per hour (mph) (161 kilometers per hour (kph)), causing extensive damage, especially on the islands of Niihau, Kauai, and Oahu (Businger 1998, pp. 2, 6). Many forest trees were destroyed (Perlman 1992, pp. 1–9), which opened the canopy and facilitated the invasion of nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671). Habitat alteration and degradation by nonnative plants is a threat to the habitat of each of the seven yellow-faced bees addressed in this finding, as described in the *Habitat Destruction and Modification by Nonnative Plants* section above. In September 1992, Hurricane Iniki, a category 4 hurricane with maximum sustained wind speeds recorded at 140 mph (225 kph), passed directly over the island of Kauai and close to the island of Oahu, causing significant damage to areas along Oahu's southwestern coast (Barber's Point or Kalaeloa, through Kaena) (Blake *et al.* 2007, p. 20), where populations of two of the seven bee species (*H. anthracinus* and *H. longiceps*) are found. Damage by future hurricanes could further decrease the remaining native-plant-dominated habitat areas that support the yellow-faced bees (Bellingham *et al.* 2005, p. 681).

All seven of the *Hylaeus* bees may also be affected by temporary habitat loss (*e.g.,* desiccation of habitats, die-off of host plants) associated with droughts, which are not uncommon on the Hawaiian Islands. Between 1860 and 2002, the Hawaiian Islands were affected by approximately 49 periods of drought (Giambelluca *et al.* 1991, pp. 3–4; Hawaii Commission on Water Resource Management 2009a and 2009b). These drought events lead to an increase in the number of forest and brush fires (Giambelluca *et al.* 1991, p. v), causing a reduction of native plant cover and habitat (D'Antonio and Vitousek 1992, pp. 77–79). With populations that have already been severely reduced in both abundance and geographic distribution, and particularly in the case of *H. hilaris,* with only one known population, even such a temporary loss of habitat can have a severe negative impact on the species if, for example, the host plants for nectar and pollen foraging are lost for one or more seasons. Because small populations are demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio, stochastic events such as hurricanes pose the threat of immediate extinction of a species with a very small and geographically restricted distribution such as the seven species of Hawaiian yellow-faced bees (Lande 1988).

In summary, natural disasters, such as hurricanes and drought, represent a significant threat to coastal and lowland dry and mesic habitats and the seven *Hylaeus* species addressed in this finding, endangering their chances for conservation and recovery. These types of events are known to cause significant habitat damage, and because the species addressed in this finding now persist in low numbers or occur in restricted ranges, they are more vulnerable to these events and less resilient to such habitat disturbances. Hurricanes and drought, even though unpredictable, have been and are expected to continue to be threats to the Hawaiian yellow-faced bees, and they therefore pose immediate and ongoing threats to the seven *Hylaeus* species and their habitat.

Habitat Destruction and Modification by Climate Change

Climate change will be a particular challenge for biodiversity because the interaction of additional stressors may push species beyond their ability to survive (Lovejoy *et al.* 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Lovejoy *et al.* 2005, p. 4). The magnitude and intensity of the impacts of global climate change and increasing temperatures on native Hawaiian ecosystems are unknown; we are not aware of climate change studies specifically related to the coastal and lowland habitat areas occupied by the seven *Hylaeus* bees, or to other *Hylaeus* bee species. Based on the best available information, climate change impacts could include the loss of native plant species that comprise the habitats in which the seven *Hylaeus* bees occur (Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246 and 14,248); however, because there have been no climate change studies looking at effects to coastal and lowland habitat, we have no way of predicting the amount or extent of any such possible habitat loss. Because the host plant habitat of the five coastal species in this finding are outside of the tidal and immediate near shore zone, we do not expect any direct effects to their habitat from sea level rise itself.

In addition, the seven yellow-faced bees may be vulnerable to changes in precipitation caused by global climate change. However, future changes in precipitation are uncertain because they depend in part on how El Niño (a disruption of the ocean atmospheric system in the tropical Pacific having important global consequences for weather and climate) might change, and reliable projections of changes in El Niño have yet to be made (Benning *et al.* 2002, pp. 14,248–14,249). Oki (2004, p. 4) has noted long-term evidence of decreased precipitation and stream flow in the Hawaiian Islands, based upon evidence collected by stream gauging stations. This long-term drying trend, coupled with periodic El Niño-caused drying events, has created a pattern of severe and persistent stream dewatering events (D. Polhemus, in litt 2008, p. 26). Future changes in precipitation and the forecast of those changes are highly uncertain because they depend, in part, on how the El Niño-La Niña (a different disruptive extreme weather and climate pattern that can alternate with El Niño) weather cycle might change (Hawaii Climate Change Action Plan 1998, pp. 2–10).

If precipitation is significantly reduced, the seven yellow-faced bees may be among the species most vulnerable to extinction, with possible impacts expected to include habitat loss and alteration or changes in disturbance regimes (*e.g.,* storms and hurricanes), in addition to possible direct physiological

stress of an unknown nature, which could potentially cause the species to seek out less suitable habitats as their preferred habitats become degraded. The probability of a species going extinct as a result of these factors increases when ranges are restricted, habitat decreases, and population numbers decline (Intergovernmental Panel on Climate Change 2007, p. 8). Such is the case for each of the seven yellow-faced bees, which are characterized by limited climatic ranges and restricted habitat requirements, small population size, and low number of individuals. However, without reliable predictions of the amount and extent of anticipated precipitation change, we are unable to determine whether precipitation changes would result in negative impacts to any of the seven yellow-faced bees at this time.

In summary, the seven *Hylaeus* bees, like most insects, are presumed to have limited environmental tolerances. They also have limited ranges and restricted habitat requirements (Daly and Magnacca 2003, p. 11). Four species (*H. facilis, H. hilaris, H. kuakea,* and *H. mana*) have small population sizes (*i.e.,* a limited number of populations restricted to relatively small habitat sites), and low numbers of individuals. The projected effects of global climate change and increasing temperatures on the seven Hawaiian yellow-faced bees would likely be related to changes in microclimatic conditions in their habitats. These changes may also lead to the loss of native plant species due to direct physiological stress, the loss or alteration of habitat, increased competition from nonnative bee species, and changes in disturbance regimes (*e.g.,* fire, storms, and hurricanes). Therefore, we believe all seven species will be exposed to projected environmental impacts that may result from changes in climate, and subsequent impacts to their habitats (Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246 and 14,248), and we do not anticipate a reduction in this ongoing threat any time in the near future. However, because the specific and cumulative effects of climate change on these seven species are presently unknown, we are not able to determine the magnitude of this potential threat with confidence or precision.

Summary of Factor A

The seven species of Hawaiian yellow-faced bees are dependent upon the persistence of native Hawaiian plants and their increasingly rare associated habitat types, particularly coastal, lowland dry, and lowland mesic areas. As identified above in our Factor A analysis, the native habitats on which the *Hylaeus* bees depend have been drastically directly altered during the last century, with many areas either converted for development or agriculture, or indirectly altered due to the effects of nonnative ungulates, nonnative plants, and fire. Habitat conversion and loss of host plants, and other stochastic events (*e.g.,* hurricanes and drought), are all contributing factors to the present and threatened destruction, modification, and curtailment of the habitat and range of the seven Hawaiian yellow-faced bees.

Land conversion and fragmentation of remaining coastal, lowland dry, and lowland mesic habitat is continuing throughout these species' known ranges, particularly due to the effects of feral ungulates, fire, and nonnative plants. We anticipate habitat conversion and fragmentation to continue, and likely increase, throughout their known ranges. As discussed above, at least five of the seven bees have experienced significant habitat losses. It is reasonable to presume the substantial reduction in lowland mesic habitat has similarly impacted the populations of *Hylaeus kuakea* and *H. mana* (Magnacca in litt. 2011, p. 78). As more habitats become unsuitable, we expect their population declines to continue or accelerate.

We have evaluated the best scientific and commercial information available regarding the present or threatened destruction, modification, or curtailment of the seven Hawaiian yellow-faced bees' habitat or range. Based on the current and ongoing habitat issues identified, their synergistic effects, and their likely continuation, we have determined this factor poses a significant threat to *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana.*

Available Conservation Measures

Some historic and current collection localities are protected from development, urbanization, and conversion to agriculture by Federal, State, or private agencies: one of two known populations of *H. facilis* and two of three known populations of *H. anthracinus* occur at Kalaupapa NHP on Molokai; three species (*H. anthracinus, H. assimulans,* and *H. kuakea*) occur in the State's Kaena Point NAR (Oahu), Kanaio NAR (Maui), West Maui NAR, and the recently acquired Honouliuli Preserve (Oahu); and three species (*H. anthracinus, H. hilaris,* and *H. longiceps*) are found on TNC's Moomomi Preserve. These areas are actively managed to restore native habitat and to reduce or eliminate many of the common threats to the native plant communities found there, including feral ungulates and wildfire. However, existing regulatory mechanisms are inadequate to provide the necessary active management needed to protect the habitat of the populations outside of these protected TNC, NHP or NAR areas (see discussion under Factor D, below). Conservation of the seven *Hylaeus* bees will require active management of their known population sites, involving exclusion and removal of feral ungulates, control and removal of nonnative plant and insect species, and the restoration of native vegetation (Magnacca 2007, p. 185).

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are unaware of any collections of the seven yellow-faced bees by recreational or insect enthusiast collectors. However, insect collecting is a valuable component of research, including taxonomic work, and is often necessary to document the existence of populations and population trends. Based on comments received in response to the 90-day finding, six of the yellow-faced bees are not believed to be particularly vulnerable to over-collection; however, one species (*H. hilaris*) may be vulnerable (Magnacca, in litt. 2010, p. 2). This species is a cleptoparasite on other rare bees, and has an inherently smaller population size and lower reproductive rate than most *Hylaeus* species, including the other six species in this finding. However, as both sexes of *H. hilaris* are readily recognizable to *Hylaeus* researchers, experts believe there will be little need to retain individuals collected during field surveys in the future (Magnacca, in litt. 2010, p. 2). Additionally, while this species is known from only one population site, the area where this population is found occurs within the Moomomi Preserve and is actively managed by TNC for common habitat threats such as feral ungulates, wild fire, and nonnative plant species.

Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to *Hylaeus anthracinus, H. assimulans, H. facilis, H. kuakea, H. longiceps,* and *H. mana* because we could find no evidence they are being collected by insect collection enthusiasts or over-collected by researchers for scientific purposes. We examined whether *H. hilaris* was directly or indirectly

vulnerable to over-collection due to its small population size (one known location), low reproductive rate, and biological dependence upon other rare *Hylaeus* host species. However, as both sexes are easily recognizable in the field and it does not collect pollen (which differentiates it from all other species), researchers believe there is little reason to retain individuals observed during surveys (Magnacca, in litt. 2010, p. 2). Therefore, we find over-collection of *H. hilaris* is not a threat to this species.

Factor C. Disease or Predation

Disease

We are not aware of any information indicating disease presents a threat to *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* or *H. mana.* Therefore, based on the best available information, we do not find that disease is a threat to the seven Hawaiian yellow-faced bees.

Predation

Predation by Nonnative Ants

Ants are known to prey upon *Hylaeus* species (Medeiros *et al.* 1986, pp. 45–46; Reimer 1994, p. 17), thereby directly eliminating them from specific areas. In this study, nests of *Nesoprosopis* sp., an endemic ground-nesting bee, could not be found in ant-infested plots but were commonly encountered in ant-free sites of the same habitat. *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). Ants are not a natural component of Hawaii's arthropod fauna, and the native *Hylaeus* species of the islands evolved in the absence of predation pressure from ants. Ants can be particularly destructive predators because of their high densities, recruitment behavior, aggressiveness, and broad range of diet (Reimer 1993, pp. 17–18). The threat of ant predation on the seven *Hylaeus* bee species is amplified by the fact that most ant species have winged reproductive adults (Borror *et al.* 1989, p. 738) and can quickly establish new colonies in suitable habitats (Staples and Cowie 2001, p. 55). In addition, these attributes allow some ants to destroy otherwise geographically isolated populations of native arthropods (Nafus 1993, pp. 19, 22–23). Ants have not been observed preying upon any of the seven species addressed in this finding. However, at least one or more of the most aggressive and widespread species (discussed below) occur in every known population site of the seven *Hylaeus* species and are presumed to be a serious threat due to the impact of predation.

At least 47 species of ants are known to be established in the Hawaiian Islands (Hawaii Ants 2008, pp. 1–11). Native insect fauna, likely including *Hylaeus* bees (Zimmerman 1948, p. 173; Reimer *et al.* 1990, pp. 40–43; HEAR database 2005, pp. 1–2), have been severely impacted by at least four particularly aggressive ant species: the big-headed ant (*Pheidole megacephala*), the long-legged ant (also known as the yellow crazy ant) (*Anoplolepis gracilipes*), *Solenopsis papuana* (NCN), and *Solenopsis geminata* (NCN). Numerous other species of ants are recognized as threats to Hawaii's native invertebrates, and an unknown number of new species of ants are established every few years (Staples and Cowie 2001, p. 53). Due to their preference for drier habitat sites, ants are more likely to occur in high densities in the coastal, dry, and mesic habitat currently occupied by the seven bees (Reimer 1994, p. 12).

The big-headed ant originated in central Africa (Krushelnycky *et al.* 2005, p. 24) and was first reported in Hawaii in 1879 (Krushelnycky *et al.* 2005, p. 24). This species is considered one of the most invasive and widely distributed ants in the world (Krushelnycky *et al.* 2005, p. 5). In Hawaii, this species is the most ubiquitous ant species found, from coastal to mesic habitat up to 4,000 ft (1,219 m) in elevation, including within the habitat areas of the seven *Hylaeus* species addressed in this finding. With few exceptions, native insects have been eliminated in habitats where the big-headed ant is present (Perkins 1913, p. xxxix; Gagne 1979, p. 81; Gillespie and Reimer 1993, p. 22). Consequently, big-headed ants represent a threat to populations of all seven *Hylaeus* bee species in coastal to dry and mesic areas Hawaii, Lanai, Maui, and Oahu (Reimer 1993, p. 14; Reimer 1994, p. 17; Daly and Magnacca 2003, pp. 9–10).

The long-legged ant appeared in Hawaii in 1952, and now occurs on Hawaii, Kauai, Maui, and Oahu (Reimer *et al.* 1990, p. 42; *http://www.antweb.org 2011*). It inhabits low-to-mid-elevation (less than 2,000 ft (600 m)) rocky areas of moderate rainfall (less than 100 in (250 cm) annually) (Reimer *et al.* 1990, p. 42). Although surveys have not been conducted to ascertain this species' presence in each of the known habitat sites occupied by the seven *Hylaeus* species addressed in this finding, we may presume that the long-legged ant likely occurs within some of the identified population sites based upon anecdotal evidence of their expanding range and their preference (as indicated where the species is most commonly collected) for coastal and dry forest habitats (antweb.org 2011). Direct observations indicate Hawaiian arthropods are susceptible to predation by this species; Gillespie and Reimer (1993, p. 21) and Hardy (1979, pp. 37–38) documented the complete extirpation of several native insects within the Kipahulu area on Maui after this area was invaded by the long-legged ant. Lester and Tavite (2004, p. 391), found that long-legged ants in the Tokelau Atolls (New Zealand) can form very high densities in a relatively short period of time with locally serious consequences for invertebrate diversity. Densities of 3,600 individuals collected in pitfall traps within a 24-hour period were observed, as well as predation upon invertebrates ranging from crabs to other ant species. On Christmas Island in the Indian Ocean, numerous studies have documented the range of impacts to native invertebrates, including the red land crab (*Gecarcoidea natalis*), as a result of predation by supercolonies of the long-legged ant (Abbott 2006, p. 102). Long-legged ants have the potential as predators to profoundly affect the endemic insect fauna in territories they occupy. Studies comparing insect populations at otherwise similar ant-infested and ant-free sites found extremely low numbers of large endemic noctuid moth larvae (*Agrostis* spp. and *Peridroma* spp.) in ant-infested areas. Nests of ground-nesting cottelid bees (*Nesoprosopis* spp.) were eliminated from ant-infested sites (Reimer *et al.* 1990, p. 42). Although only cursory observations exist in Hawaii (Reimer *et al.* 1990, p. 42), we believe long-legged ants are a threat to populations of all seven yellow-faced bees, in dry to mesic areas within their elevation ranges.

Solenopsis papuana is the only abundant, aggressive ant that has invaded intact mesic to wet forest, as well as coastal and lowland dry habitats. This species occurs from sea level to over 2,000 ft (600 m) on all of the main Hawaiian Islands, and is still expanding its range (Reimer 1993, p. 14). Although surveys have not been conducted to ascertain this species' presence in each of the known habitat sites occupied by the seven *Hylaeus* species addressed in this finding, because of this species' expanding range and its widespread occurrence in coastal, dry lowland, and mesic habitats, it may threaten populations of all seven *Hylaeus* bees with predation pressure on the islands of Hawaii, Kahoolawe, Lanai, Maui, and Oahu over 2,000 ft (600 m) in elevation (Reimer *et al.* 1990, p. 42; Reimer 1993, p. 14).

Like *Solenopsis papuana, S. geminata* is also considered a significant threat to native invertebrates (Gillespie and Reimer 1993) and occurs on all the main Hawaiian Islands (Reimer *et al.* 1990; Nishida 1997). Found in drier areas of the Hawaiian Islands, it has displaced *Pheidole megacephala* as the dominant ant in some areas (Wong and Wong 1988, p. 175). Known to be a voracious nonnative predator in many areas to where it has spread, the species was documented to significantly increase fruit fly mortality in field studies in Hawaii (Wong and Wong 1988, p. 175). In addition to predation, *S. geminata* workers tend honeydew-producing members of the Homoptera suborder, especially mealybugs, which can impact plants directly and indirectly through the spread of disease (Manaaki Whenua—Landcare Research 2011: *http://www.landcareresearch.co.nz/research/biocons/invertebrates/Ants/invasive_ants/solgem_info.asp*).

Solenopsis geminata was included among the eight species ranked as having the highest potential risk to New Zealand in a detailed pest risk assessment for the country (Global Invasive Species Database 2011: *http://www.issg.org/database/species/ecology.asp?si=169&fr=1&sts=&lang=EN*), and is included as one of five ant species listed among the ''100 of the World's Worst invaders'' (Manaaki Whenua—Landcare Research 2011: *http://www.landcareresearch.co.nz/research/biocons/invertebrates/Ants/invasive_ants/solgem_info.asp*).

Although surveys have not been conducted to ascertain this species' presence in each of the known habitat sites occupied by the seven *Hylaeus* species addressed in this finding, because of this species' expanding range and its widespread occurrence in coastal, dry lowland, and mesic habitats, it may threaten populations of all seven *Hylaeus* bees with predation pressure on the islands of Hawaii, Kahoolawe, Lanai, Maui, and Oahu from sea level up to 1,000 ft (300 m) in elevation (Wong and Wong 1988, p. 175).

The *Hylaeus* egg, larvae, and pupal stages are more vulnerable to attack by ants than the mobile adult bees (Daly and Magnacca 2003, p. 10). Invasive ants have severely impacted ground-nesting *Hylaeus* species in particular (Cole *et al.* 1992, pp. 1317, 1320; Medeiros *et al.* 1986, pp. 45–46), because their nests are easily accessible and in or near the ground. Because *Hylaeus anthracinus, H. facilis, H. hilaris,* and *H. longiceps* are believed to be ground-nesting species, they may also be more susceptible to ant predation (Magnacca 2005g, p. 2).

Hylaeus populations are known to be drastically reduced in ant-infested areas (Medeiros *et al.* 1986, pp. 45–46; Stone and Loope 1987, p. 251; Cole *et al.* 1992, pp. 1313, 1317, 1320; Reimer 1994, p. 17). The presence of ants in nearly all of the low-elevation habitat sites historically and currently occupied by the seven *Hylaeus* bee species may increase the uncertainty of *Hylaeus* recovery within these areas (Reimer 1994, pp. 17–18; Daly and Magnacca 2003, pp. 9–10). Although the primary impact of ants on the native invertebrate fauna is via predation (Reimer 1994, p. 17), they also compete for nectar (Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155) and nest sites (Krushelnycky *et al.* 2005, pp. 6–7). Some ant species may impact *Hylaeus* bees indirectly as well, by preying on seeds of native plants, thereby reducing the plant's recruitment and fecundity (Bond and Slingsby 1984, p. 1,031). Several studies (Krushelnycky 2005, p. 9; Lach 2008, p. 155) suggest a serious ecosystem-level effect of invasive ants on pollination. Where ranges overlap, ants compete with native pollinators such as *Hylaeus* bees and preclude them from pollinating native plants. For example, the big-headed ant is known to actively rob nectar from flowers without pollinating them (Howarth 1985, p. 157). Lach (2008, p. 155) found that *Hylaeus* bees that regularly collect pollen from flowers of *Metrosideros polymorpha* were entirely absent from trees with flowers exposed to foraging by big-headed ants.

The rarity or disappearance of native *Hylaeus* species from historically documented localities over the past 100 years (including the seven Hawaiian yellow-faced bee species) is due to a variety of factors. Although we have no direct information that conclusively correlates the decrease in populations of these seven *Hylaeus* bees due to the establishment of nonnative ants, severe predation of other *Hylaeus* species by ants has been documented, resulting in clear reductions in populations. We expect similar predation impacts to these seven *Hylaeus* bees to continue as a result of the widespread presence of ants throughout the Hawaiian Islands, their highly efficient and non-specific predatory behavior, and their ability to quickly disperse and establish new colonies. Therefore, we conclude that predation by nonnative ants represents a serious threat to the continued existence of *H. anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* now and into the future.

Predation by Nonnative Western Yellow Jacket Wasps

The western yellow jacket wasp (*Vespula pensylvanica*) is a potentially serious threat to the seven *Hylaeus* bees (Gambino *et al.* 1987, p. 170; Wilson *et al.* 2009, pp. 1–5). The western yellow jacket wasp is a social wasp species native to the mainland of North America. It was first reported from Oahu in the 1930s (Sherley 2000, p. 121), and an aggressive race became established in 1977 (Gambino *et al.* 1987, p. 170). In temperate climates, the western yellow jacket wasp has an annual life cycle, but in Hawaii's tropical climate, colonies of this species persist through a second year, allowing them to have larger numbers of individuals (Gambino *et al.* 1987, p. 170) and thus a greater impact on prey populations. Most colonies are found between approximately 2,000 and 3,500 ft (approximately 600 and 1,050 m) in elevation (Gambino *et al.* 1990, p. 1,088), although they can also occur at sea level. The western yellow jacket wasp is known to be an aggressive, generalist predator (Gambino *et al.* 1987, p. 170), and has been documented preying upon Hawaiian *Hylaeus* species (although not specifically upon any of the seven species addressed in this finding) (Wilson *et al.* 2009, p. 2). However, predation by the western yellow jacket wasp is a potentially significant threat to all seven of the yellow-faced bees because of the wasp's presence in habitat occupied by the seven Hylaeus bees combined with their small population sizes. This may present a particular threat to *H. facilis, H. hilaris, H. kuakea,* and *H. mana,* because each species is known from only two or fewer sites. It has been suggested the western yellow jacket wasp may compete for nectar with *Hylaeus* species, but we have no information to suggest this represents a threat to the seven *Hylaeus* bees.

Predation by Nonnative Parasitoid Wasps

Native and nonnative parasitoid wasps are known to parasitize some *Hylaeus* species on Oahu (although not upon any of the seven species addressed in this finding), and may pose a threat to five of the seven yellow-faced bees (*H. anthracinus, H. facilis, H. kuakea, H. longiceps,* and *H. mana*) (Daly and Magnacca 2003, p. 10) because they occur on Oahu as well. While the available information indicates some Oahu *Hylaeus* larvae have been parasitized (and subsequently killed) by parasitoid wasps from the Encyrtidae

and Eupelmidae families, it is unknown whether these wasps also utilize *H. anthracinus, H. facilis, H. kuakea, H. longiceps,* and *H. mana* as nutritional hosts for their larvae (Daly and Magnacca 2003, p. 98). We are concerned that *H. anthracinus, H. facilis, H. kuakea, H. longiceps,* and *H. mana* may be exposed to wasp parasitism, but we are unaware of any information to indicate this is a threat to these five *Hylaeus* bees.

Summary of Factor C

We do not find evidence that disease is currently impacting the seven Hawaiian yellow-faced bees, nor do we have information to indicate disease outbreaks will occur in the future. Although we have no direct information that conclusively correlates the decrease in populations of these seven *Hylaeus* bees due to the establishment of western yellow jacket wasps, severe predation of other *Hylaeus* species by yellow jacket wasps has been documented, resulting in clear reductions in populations. We expect similar predation impacts to these seven *Hylaeus* bees to continue as a result of the widespread presence of yellow jacket wasps in many areas throughout the Hawaiian Islands, their highly efficient and non-specific predatory behavior, and their ability to quickly disperse and establish new colonies.

While we are concerned that *Hylaeus anthracinus, H. facilis, H. kuakea, H. longiceps,* and *H. mana* may be threatened by wasp parasitism on Oahu, we are unaware of any information to indicate this is a threat to these five *Hylaeus* bees at this time, or that it is likely to become so in the future. The presence of nonnative ants in nearly all lowland habitat historically and currently occupied by the seven *Hylaeus* bees, combined with the near extirpation of native insects in these areas, suggest predation by nonnative ants is a serious threat to the seven Hawaiian yellow-faced bees. Observations and reports have documented that ants are particularly destructive predators because of their high densities, broad ranges of diet, and ability to establish new colonies in otherwise geographically isolated locations because the reproductive adult ants are able to fly. Because the ranges of the big-headed ant, long-legged ant, *Solenopsis geminata,* and *Solenopsis papuana* overlap the ranges of the seven *Hylaeus* bees, and based on their observed predatory behavior at other locations where they occur, these nonnative predators represent an imminent and serious threat to *H. anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana.* Unless these aggressive, nonnative ant predators are eliminated or controlled, we expect this threat to continue or increase. Furthermore, a decrease in the amount and distribution of suitable host plants for foraging could indirectly impact these seven species by forcing them to seek less optimal, but predator-free, foraging sites.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Currently, there are no Federal, State, or local laws, treaties, or regulations that specifically conserve or protect the seven *Hylaeus* bee species from the threats described in this finding. There are some regulations that potentially address the threats posed by introduced, nonnative species; these are discussed below.

Inadequate Protection from Nonnative Ungulates

Nonnative ungulates pose a major ongoing threat to the seven *Hylaeus* bees through destruction and degradation of their habitat. Although some public hunting areas are fenced to prevent the incursion of nonnative ungulates, there are currently no Federal, State, or local laws, treaties, or regulations that adequately address the threats from nonnative ungulates to the seven yellow-faced bees' terrestrial habitat. The existing regulatory mechanisms do not address the threats from nonnative ungulates to the seven yellow-faced bee species or their habitat. The absence of regulatory mechanisms exacerbates the threats discussed under Factor A.

Inadequate Protection from Introduction of Nonnative Species

The Hawaii Department of Agriculture (HDOA) is the lead State agency in protecting Hawaii's agricultural and horticultural industries, animal and public health, natural resources, and environment from the introduction of nonnative, invasive species (HDLNR 2003, p. 3–10). While there are several State agencies (Hawaii Department of Agriculture (HDOA), Hawaii Department of Lands and Natural Resources (HDLNR), Hawaii Department of Health (HDOH)) authorized to prevent the entry of pest species into the State, the existing regulations are inadequate for the reasons discussed in the sections below.

In 1995, a partnership, Coordinating Group on Alien Pest Species (CGAPS), comprised primarily of managers from every major Federal, State, county, and private agency and organization involved in invasive species work in Hawaii, was formed in an effort to influence policy and funding decisions, improve communication, increase collaboration, and promote public awareness (CGAPS 2009). This group facilitated the formation of the Hawaii Invasive Species Council (HISC), which was created by gubernatorial executive order in 2002 to coordinate local initiatives for the prevention and control of invasive species by providing policy-level direction and planning for the State departments responsible for invasive species issues. In 2003, the governor signed into law Act 85, which conveys statutory authority to the HISC to coordinate approaches among the various State and Federal agencies, and international and local initiatives, for the prevention and control of invasive species (HDLNR 2003, p. 3–15; HISC 2009a; Haw. Rev. Stat. section 194–2(a)). Some of the recent priorities for the HISC include interagency efforts to control nonnative species such as the plants *Miconia calvescens* (miconia) and *Cortaderia* sp. (pampas grass), coqui frogs (*Eleutherodactylus coqui*), and ants (HISC 2009). However, in October 2009, HISC approved a 2010 budget that, due to a tighter economy in Hawaii and anticipated budget cuts in State funding support, resulted in a 50 percent reduction in funding with an anticipated setback in conservation achievements and the loss of experienced, highly trained staff (HISC 2009b).

Inadequate Regulatory Control of Nonnative Invertebrate Species

As noted above (see *Factor C, Disease and Predation*), predation by nonnative ants and the nonnative yellow jacket wasp is a potentially significant threat to the seven species. Commercial shipping and air cargo, as well as biological introductions to Hawaii, have resulted in the establishment of over 3,372 species of nonnative insects (Howarth 1990, p. 18; Staples and Cowie 2001, p. 52), with an estimated continuing establishment rate of 20 to 30 new species per year (Beardsley 1962, p. 101; Beardsley 1979, p. 36; Staples and Cowie 2001, p. 52). The prevention and control of introduced pest species in Hawaii is the responsibility of Hawaii State government and Federal agencies, along with a few private organizations. Even though these agencies have regulations and some controls in place, complete control of introduced pest species is difficult to achieve. Consequently, the introduction and movement of nonnative invertebrate pest species, including nonnative ants and yellow jacket wasps, between islands and from one watershed to the next, continues.

Inadequate Regulatory Control of Nonnative Plant Species

Nonnative plants destroy and modify habitat throughout the ranges of each of the seven *Hylaeus* species addressed in this 12-month finding. As such, they represent a significant and immediate threat to each of these species. In addition, nonnative plants have been shown to out-compete native plants and convert native-dominated plant communities to nonnative plant communities (see *Factor A—Habitat Destruction and Modification by Nonnative Plants*). The HDOA regulates the import of plants into the State from domestic origins under Hawaii State law (Haw. Rev. Stat. Ch. 150A). While all plants require inspection upon entry into the State and must be ''apparently free'' of insects and diseases, not all plants require import permits. Parcels brought into the State by mail or cargo must be clearly labeled as ''Plant Materials'' or ''Agricultural Commodities,'' but, given budget constraints and an insufficient number of personnel, it is unlikely that all of these parcels are inspected or monitored prior to delivery in Hawaii. Shipments of plant material into Hawaii must be accompanied by an invoice or packing manifest listing the contents and quantities of the items imported, although it is unclear if all of these shipments are inspected or monitored prior to delivery (HDOA 2009). There are only 12 plant crops regulated (H.A.R. chapter 4–70) to some degree: sugarcane and grasses, pineapple and other bromeliads, coffee, cruciferous vegetables, orchids, banana, passion fruit, pine, coconut, hosts of European corn borer, palms, and hosts of Caribbean fruit fly (HDLNR 2003, p. 3–11). The HDOA also maintains the State list of noxious weeds, and these plants are restricted from entry into the State except by permit from the HDOA's Plant Quarantine Branch.

Although the State has general guidelines for the importation of plants, and regulations are in place regarding the plant crops mentioned above, the intentional or inadvertent introduction of nonnative plants outside the regulatory process and movement of species between islands and from one watershed to the next continues, which represents a threat to native flora and fauna for the reasons described above. In addition, government funding is inadequate to provide for sufficient inspection services and monitoring. One study concluded plant importation laws virtually ensure new invasive plants will be introduced via the nursery and ornamental trade, and outreach efforts cannot keep up with the multitude of new invasive plants being distributed. The author states the only thing wide-scale public outreach can do in this regard is to let the public know new invasive plants are still being sold, and suggest that people should ask for noninvasive or native plants instead (C. Martin, in litt. 2007, p. 9).

On the basis of the above information, existing regulatory mechanisms do not adequately protect the seven *Hylaeus* species from the threat of new introductions of nonnative species, and the continued expansion of nonnative species populations on and between islands and watersheds. Nonnative species may directly compete with, prey upon, or modify or destroy the habitat of one or more of the seven yellow-faced bees for food, space, and other necessary resources. Because current Federal, State, and local laws, treaties, and regulations are inadequate to prevent the introduction and spread of nonnative species from outside the State of Hawaii, as well as between islands and watersheds, the threats from these introduced species remain immediate and significant due to an inadequacy of existing regulatory mechanisms.

Summary of Inadequacy of Existing Regulatory Mechanisms

We found that existing regulatory mechanisms and agency policies do not address the primary threats to the seven yellow-faced bee species and their habitat from nonnative ungulates. The State's current management of nonnative game mammals does not prevent the degradation and destruction of habitat of *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* (see discussion under Factor A).

We consider the threat from inadequate regulatory mechanisms to be immediate and significant for the following reasons:

(1) Existing State and Federal regulatory mechanisms are not preventing the introduction and spread of nonnative species between islands and watersheds. Habitat-altering nonnative plant species (Factor A) and predation by nonnative animal species (Factor C) pose major ongoing threats to the seven *Hylaeus* species.

Because existing regulatory mechanisms are inadequate to maintain habitat for the seven species of *Hylaeus* and to prevent the spread of nonnative species, the inadequacy of existing regulatory mechanisms is considered to be a significant and immediate threat to *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana.*

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Small Number of Populations and Individuals

Species endemic to single islands or known from few, widely dispersed locations are inherently more vulnerable to extinction than widespread species because of the higher risks from genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as hurricanes, landslides, and drought (Lande 1988, p. 1,455; Mangel and Tier 1994, p. 607; Pimm *et al.* 1988, p. 757). These problems can be further magnified when populations are few and restricted to a limited geographic area, and the number of individuals is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors, in a process described as an extinction vortex (Gilpin and Soulé 1986, pp. 24–25). Small, isolated populations often exhibit a reduced level of genetic variability or genetic depression due to inbreeding, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (Frankham 2003, pp. S22–S29; Soulé 1986, pp. 31–34). The negative impacts associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes can be further magnified by synergistic interactions with other threats.

The seven *Hylaeus* bee species have very small populations and are likely more vulnerable to habitat change and stochastic events due to low genetic variability (Daly and Magnacca 2003, p. 3; Magnacca 2007, p. 173). According to Magnacca (2007, p. 3), five species have not been collected recently from one or more islands from which they were historically known, all seven species are restricted to rare habitat, and two are particularly rare and potentially endangered. *Hylaeus facilis* and *H. hilaris* have not been recently observed at some historical collection sites; *H. facilis* is currently known from two populations, and *H. hilaris* is known from only a single population. In addition, *H. kuakea,* first collected in 1997, is only known from two populations, and *H. mana,* just collected in 2002, is known from a single population. Although *H. kuakea* and *H. mana* were only discovered relatively recently, researchers believe these two species were once more widespread

when their lowland mesic habitat was not highly fragmented and degraded by invasive species, as is currently the case (Magnacca in litt. 2011, p. 95). The small number of populations known for each of these four *Hylaeus* species increases their risk of extinction due to stochastic events such as hurricanes, wildfires, or prolonged drought (Jones *et al.* 1984, p. 209; Smith and Tunison 1992, p. 398).

The recurrence intervals for stochastic events, for example, wildfires, prolonged drought, and hurricanes, cannot be predicted, which introduces some uncertainty regarding potential effects to *H. facilis, H. hilaris, H. kuakea,* and *H. mana* (the four species most at risk of the seven *Hylaeus* bees). However, because *Hylaeus hilaris* is cleptoparasitic and restricted to one known population, it is at particularly high risk of extinction because of the rarity of its hosts and the fact it is the most habitat-specific of all Hawaiian bees (Magnacca 2007a, p. 181). The fact that a species is potentially vulnerable to stochastic processes does not necessarily mean it is reasonably likely to experience or have its status affected by a given stochastic process within timescales meaningful under the Act. Because of their small number of populations, negative impacts to *H. facilis, H. hilaris, H. kuakea,* and *H. mana* from hurricanes, wildfires, and drought would be likely if these events occur. Because these events have been documented on Oahu and other Hawaiian islands in the past, we believe that they represent an ongoing threat to these four species, although the specific timing, location, or magnitude is unknown. The threat from fire is unpredictable, but omnipresent in habitats that have been invaded by nonnative, fire-prone grasses. Hurricanes and drought conditions present an ongoing and ever-present threat, because they can occur at any time, although the incidence and magnitude of specific events is not predictable.

Competition With Nonnative Insects

There are 15 known species of nonnative bees in Hawaii (Snelling 2003, p. 342), including two nonnative *Hylaeus* species (Magnacca 2007, p. 188). Most nonnative bees inhabit areas dominated by nonnative vegetation and do not compete with native Hawaiian bees for foraging resources (Daly and Magnacca 2003, p. 13). The European honey bee (*Apis mellifera*) is an exception; this social species is often very abundant in areas with native vegetation and aggressively competes with *Hylaeus* for nectar and pollen (Hopper *et al.* 1996, p. 9; Daly and Magnacca 2003, p. 13; Snelling 2003, p. 345).

The European honey bee was first introduced to the Hawaiian Islands in 1875, and currently inhabits areas from sea level to the upper tree line boundary (Howarth 1985, p. 156). European honey bees have been observed foraging on *Hylaeus* host plants such as *Scaevola* spp. and *Sesbania tomentosa* (Hopper *et al.* 1996, p. 9; Daly and Magnacca 2003, p. 13; Snelling 2003, p. 345). Although we lack information indicating Hawaiian *Hylaeus* populations have declined because of competition with European honey bees for nectar and pollen, the European honey bee does forage in *Hylaeus* spp. habitat and may exclude *Hylaeus* spp. (Magnacca 2007, p. 188; Lach 2008, p. 155). *Hylaeus* species do not occur in native habitat where there are large numbers of honey bees, although the impact of moderate populations of honey bees is not known (Magnacca 2007, p. 188). Nonnative, invasive bees are widely documented to decrease nectar volumes and usurp native pollinators (Lach 2008, p. 155). There are also indications that populations of the European honey bee are not as vulnerable as *Hylaeus* bees to predation by nonnative ant species (see *Factor C. Disease and Predation).* Lach (2008, p. 155) observed that *Hylaeus* bees that regularly collect pollen from the flowers of *Metrosideros polymorpha* trees were entirely absent from trees with flowers visited by the big-headed ant, while visits by the European honey bee were not affected. As a result, the European honey bee may have a competitive advantage over *Hylaeus* spp., as it is not excluded by the big-headed ant (Lach 2008, p. 155).

Other nonnative bees found in areas of native vegetation include carpenter bees (*Ceratina* species), Australian colletid bees (*Hylaeus albonitens*), and *Lasioglossum impavidum* (NCN) (Magnacca 2007, p. 188). While it has been suggested these nonnative bees may impact native *Hylaeus* bees through competition for pollen based on their similar size and flower preferences, there is no information that demonstrates these nonnative bees forage on *Hylaeus* host plants (Magnacca 2007, p. 188). It has also been suggested parasitoid wasps may compete for nectar with native *Hylaeus* species (Daly and Magnacca 2003, p. 10); however, information demonstrating nonnative parasitoid wasps forage on the same host plants as the seven Hawaiian yellow-faced bees is unavailable.

We acknowledge the potential for negative impacts on *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* from competition with the European honey bee for nectar and pollen (Magnacca 2007, p. 188). In addition, one study in Hawaii suggests the European honey bee may have an additional advantage for collecting pollen and nectar because it may not be negatively affected by the presence of predatory big-headed ants on native vegetation (Lach 2008, p. 155). Competition with the European honey bee may be a potential threat to the seven *Hylaeus* species, because (1) Honey bees forage on *Hylaeus* host plant species; (2) they may exclude *Hylaeus* spp. from those resources (*Hylaeus* spp. are never found foraging in the presence of European honey bees); and (3) honey bees may have a competitive advantage over Hawaiian *Hylaeus* ssp., as one study suggests honey bees are not negatively affected by the presence of big-headed ants on native vegetation to the extent the *Hylaeus* species may be. Honey bees have been known to exclude other *Hylaeus* species, and it is well-documented that they forage in native plant areas. However, the best available scientific information indicates that competition with the European honey bee may represent a threat to these seven Hylaeus species, but the threat is of unknown magnitude, and additional research would be helpful to better understand this interaction.

We have no information indicating other species of nonnative bees or parasitoid wasps negatively impact populations of the seven species of *Hylaeus* bees due to competition for nectar and pollen. Therefore, we have determined that competition with other species of nonnative bees or parasitoid wasps is not a threat.

Summary of Factor E

The small number of populations of *Hylaeus facilis, H. hilaris, H. kuakea,* and *H. mana* increase their risk of extinction due to stochastic events such as hurricanes, wildfires, and drought, which, although unpredictable, represent an ongoing and significant threat to *H. facilis, H. hilaris, H. kuakea,* and *H. mana.* We have no information indicating other nonnative bees or parasitoid wasps compete for nectar and pollen on *Hylaeus* host plants. Therefore, we have determined that competition with these species does not present a significant threat to the seven *Hylaeus* species. Honey bees forage in native plant areas and have been known to exclude other *Hylaeus* species. However, the best available information does not indicate competition between honey bees and the seven *Hylaeus*

species addressed in this finding is a significantly quantifiable threat.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* are endangered or threatened throughout their ranges. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by these seven *Hylaeus* species. We reviewed the petitions, information available in our files, information submitted to us following publication of our 90-day petition finding (75 FR 34077; June 16, 2010), and other available published and unpublished information, and we consulted with *Hylaeus* bee experts and other Federal and State resource agencies. In considering what factors might constitute a threat, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. However, the mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point the species meets the definition of endangered or threatened under the Act.

In this review of the status of the seven *Hylaeus* species, we identified a number of threats under the five-factor analysis including: destruction or modification of coastal and lowland habitats from urbanization and land conversion, nonnative plants, nonnative ungulates, and wildfire (Factor A); predation by nonnative ants and the western yellow jacket wasp (Factor C); inadequate protection from threats by existing regulatory mechanisms (Factor D); and other natural or manmade factors, such as small population size (Factor E).

Under Factor A (''*Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range''*), we evaluated the effects of: (1) Urbanization and land use conversion; (2) nonnative plant species; (3) nonnative ungulates; (4) fire; (5) recreational activities; (6) stochastic events, such as hurricanes and droughts; and (7) climate change.

Hylaeus anthracinus, H. assimilans, H. facilis, H. hilaris, H. kuakea, H. longiceps, and *H. mana* are known from native coastal, lowland dry, and lowland mesic habitats. These habitats have been severely altered and degraded over the past 200 years due to land management practices such as agriculture and urban development, and from the impacts of nonnative species, fire, recreational activities, and stochastic events (*e.g.,* hurricanes and drought). The loss of native coastal and lowland dry habitats in the main Hawaiian Islands is estimated to be more than 75 percent and 90 percent, respectively (Bruegmann 1996, p. 26; Juvik and Juvik 1998, p. 124; Xerces Society 2009, p. 23). Additionally, native coastal and lowland habitats continue to become increasingly fragmented due to a variety of factors, thereby reducing the ability of the seven *Hylaeus* species to locate host plants to forage for nectar and pollen and to locate suitable nesting sites. In particular, coastal and lowland dry habitats remain popular for land use and development. During surveys conducted between 1998 and 2007, the five *Hylaeus* species collected by Perkins over 100 years ago (*Hylaeus anthracinus, H. assimilans, H. facilis, H. hilaris,* and *H. longiceps*), were largely absent from almost all of their historically known locations. *Hylaeus kuakea* and *H. mana* were discovered relatively recently, and we lack information that would conclusively establish their historical range. Based on our assessment of the best available information, we believe degradation and destruction of native coastal and lowland habitats due to past and present land management practices, such as agriculture and urban development, pose a significant threat to the seven *Hylaeus* species throughout their ranges now and will likely continue for the foreseeable future.

The spread of nonnative plants and the conversion of coastal and lowland native habitat to nonnative habitat are believed to be primary causes of the decline of, and current threats to, the known populations of each of the seven *Hylaeus* species. The seven *Hylaeus* species depend on native plants for nectar and pollen and are almost entirely absent from habitat dominated by nonnative plants. Many of the native plants used as foraging resources by the adults of the seven *Hylaeus* species are declining due to competition with nonnative plants and a lack of native pollinators that actually pollinate while collecting nectar. For example, *H. anthracinus* and *H. longiceps* forage on three federally endangered plants (*Chamaesyce celastroides* var. *kaenana, Hedyotis coriacea,* and *Sesbania tomentosa*). To compound our concerns, inadequate regulatory control (see *Factor D. The Inadequacy of Existing Regulatory Mechanisms*) has led to and continues to contribute to an ever increasing number of nonnative plant species introductions to the Hawaiian Islands. Once established, nonnative plant species are quickly spread by intrastate commerce, birds, people, feral ungulates, and on their own, and result in the rapid alteration and degradation of the native plant communities upon which these seven Hawaiian yellow-faced bees depend. Therefore, based on our assessment of the best available information, we believe degradation and destruction of native coastal and lowland habitat due to nonnative plants poses a significant threat to the seven *Hylaeus* species throughout their ranges now and will likely continue for the foreseeable future.

Nonnative ungulates (*e.g.,* pigs, goats, axis deer, and cattle) are one of the primary causes of the alteration and degradation of native vegetation and habitat in the Hawaiian Islands. Because feral ungulate populations are managed by the State for the enhancement of State Game Management Units and because there is no regulatory mechanism for their control or elimination (see *Factor A. Habitat Destruction and Modification by Nonnative Ungulates*), it is expected that this threat will continue to impact the habitat of the seven yellow-faced bees addressed in this finding. Habitat degradation and destruction, due to their direct effects of trampling and consuming native plants and indirect effects of rooting, erosion, and spreading seeds and fruits of nonnative plants, pose a significant threat to the seven *Hylaeus* species throughout their ranges now and will likely continue for the foreseeable future.

Fire is a human-exacerbated threat to native species and natural vegetation in Hawaii. Fire can kill most native trees and shrubs, and in a burned area native plants are usually replaced by nonnative plants adapted to survive and regenerate after fire. The seven *Hylaeus* bees

primarily occur in coastal, lowland dry, and lowland mesic habitat areas that are particularly prone to the impacts of fire. Repeated fires in these areas often result in the conversion of native-dominated vegetation to nonnative-dominated vegetation. Fires enable fire-adapted, nonnative plants to gain a competitive edge over native plants, resulting in the replacement of native plants used for foraging by *Hylaeus* bees with nonnative plants that are not used by the bees for foraging. Although there are management plans in place to address the threat of fire in many areas of the State, fires continue to occur annually across the State and threaten the future existence of known yellow-faced bee habitat and population sites (see *Factor A. Habitat Destruction and Modification by Fire*). For these reasons, we conclude fire remains a significant threat to the seven *Hylaeus* species throughout their ranges in coastal, lowland dry, and lowland mesic habitats, and will likely continue for the foreseeable future.

While trampling and compaction of vegetation from human activities may negatively impact the habitat of some populations of the seven Hylaeus bees, we conclude recreational activities are not a threat to *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* throughout their ranges.

We are concerned about the effects of projected climate change, particularly rising temperatures and their impact on *Hylaeus* spp. host plants; however, we recognize there is limited information on the exact nature of impacts from climate change. Because the specific and cumulative effects of climate change on the seven *Hylaeus* bees are presently unknown, any conclusion regarding the immediacy and significance of the threat from climate change would be speculative. However, the effects of climate change are expected to exacerbate and compound the many ongoing threats facing these species and their habitat (*e.g.,* frequency of wildfire, reduced precipitation, etc.).

Based on our evaluation of Factor A, using the best available scientific and commercial information as summarized above, we conclude the present or threatened destruction, modification, or curtailment of the habitat or range of *Hylaeus anthracinus, H. assimilans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* presents a significant threat to these seven *Hylaeus* species across their ranges.

Under Factor B (''*Overutilization for Commercial, Recreational, Scientific, or Educational Purposes''*), we determined six of the seven *Hylaeus* species are not threatened by over-collection. We examined whether *H. hilaris* was potentially vulnerable to over-collection because it is inherently rare, known from only one location, and has a cleptoparasitic life history. However, because this species is easily recognizable, we see little reason for scientists to retain specimens observed in the field during future collections. In addition, because it occurs in habitat that is protected and managed by TNC, we find overutilization is not a threat to *H. hilaris* throughout its range. Furthermore, recreational or insect enthusiast collection of the seven *Hylaeus* bees does not appear to be a threat to any of these species.

Under Factor C (''*Disease or Predation''*), we found no evidence that disease is currently impacting the seven Hawaiian yellow-faced bees, or that disease outbreaks will increase in the future. Ants are found in habitats throughout the Hawaiian Islands, are known to prey upon *Hylaeus* bees, and are reported to have eliminated *Hylaeus* species from specific areas where their ranges overlap. Because ants are easily able to widely disperse and are efficient predators, and because *Hylaeus* species are not adapted to avoid ant predation, we believe this threat will continue to threaten all populations of all seven yellow-faced bees. Therefore, we conclude predation by ants is an ongoing and significant threat to the seven *Hylaeus* bees across their entire ranges, and this threat is likely to continue into the future.

Yellow jacket wasps are aggressive, generalist predators found in the same types of habitats as these seven *Hylaeus* species, and have been documented preying upon other Hawaiian *Hylaeus* bees. Therefore, we conclude yellow jacket wasp predation is a significant threat to the seven *Hylaeus* bees across their entire ranges and particularly to those species known from two or fewer population sites. The best available information does not suggest predation by native and nonnative parasitoid wasps is a significant threat to the seven *Hylaeus* bees.

Under Factor D (''*Inadequacy of Existing Regulatory Mechanisms''*), we consider the threat from inadequate regulatory mechanisms to be immediate and significant. The State of Hawaii's current management of nonnative game mammals does not adequately address the primary threats to *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* or their habitat (Factor A). Existing State and Federal regulatory mechanisms are not adequately preventing the introduction and spread of nonnative animal and habitat-altering plant species between islands and watersheds (Factor A), and predation by nonnative animal species (Factor C) poses a major ongoing threat to the seven *Hylaeus* species. In addition, existing regulatory mechanisms are inadequate to prevent the introduction and spread of nonnative insect predators, or competitors that directly compete with one or more of the seven bee species for food, space, and other necessary resources (see Factors C and E). Based on our evaluation of Factor D, we conclude that the seven *Hylaeus* bee species are threatened by inadequate existing regulatory mechanisms across their ranges.

Under Factor E (''*Other Natural or Manmade Factors Affecting the Species' Continued Existence''*), we determined that small population size is a significant threat to *Hylaeus facilis, H. hilaris, H. kuakea,* and *H. mana.* These species are each only known from one or two populations, and the risk of extinction from stochastic events (*e.g.,* hurricanes, wildfires, and drought) is high. We have also determined that competition with the European honey bee is a potentially significant threat to all seven species. While we lack information indicating Hawaiian *Hylaeus* populations have declined because of competition with the European honey bee for nectar and pollen, the native *Hylaeus* and the European honey bee are competing for the same pollen and nectar resources. However, we have no information indicating that competition is at a level that represents a threat to the seven *Hylaeus* species addressed in this finding.

We found that competition for nectar and pollen with other species of nonnative bees or parasitoid wasps is not a threat to the seven *Hylaeus* bees at this time. Based on our evaluation under Factor E as summarized above, we conclude *Hylaeus facilis, H. hilaris, H. kuakea,* and *H. mana* are threatened because of their small population size across their ranges.

On the basis of the best scientific and commercial information available, we find that the petitioned action, listing the seven species of Hawaiian yellow-faced bees (*Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana*) as endangered or threatened is warranted. We will make a determination on the status of these species as endangered or threatened when we prepare a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and

progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render any of the seven Hawaiian yellow-faced bee species at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing these species is not warranted at this time for the following reasons. Although populations are small, five of the seven species occur in several discrete localities, and we do not believe there are any potential threats of such great immediacy, severity, or scope that would simultaneously threaten all of the known populations of these five species with the imminent risk of extinction. Although *Hylaeus hilaris* is known from one population on the northwest coast within TNC's Moomomi Preserve on Molokai, and *H. mana* is known from one population along the Manana Trail in the Koolau Mountains on Oahu, within the State's Ewa Forest Reserve, we are unaware of any potential threats in either of these areas that would threaten these populations with the imminent risk of extinction. However, if at any time we determine that issuing an emergency regulation temporarily listing any of these seven species of Hawaiian yellow-faced bees is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled ''Endangered and Threatened Species Listing and Recovery Priority Guidelines,'' address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates). We assigned the seven species of Hawaiian yellow-faced bees a Listing Priority Number (LPN) of 2, based on our finding that the seven species face threats that are of high magnitude and are imminent. This is the highest priority that can be provided to a species under our guidance.

Threats to the seven species of Hawaiian yellow-faced bees include the present or threatened destruction, modification, or curtailment of their habitat, predation, the inadequacy of existing regulatory mechanisms, and other natural or manmade factors. One or more of the threats are occurring in each of the seven species' known populations in the Hawaiian Islands. These threats are ongoing and, in some cases (such as nonnative species), are considered irreversible. Our rationale for assigning each of the seven species of Hawaiian yellow-faced bees an LPN 2 is outlined below.

Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. The threats facing the seven species of Hawaiian yellow-faced bees are high in magnitude because the major threats (destruction or modification of their habitat, predation, inadequate protection from threats by existing regulatory mechanisms, and other natural or manmade factors) occur throughout all of the ranges of each of the seven species.

Based on an evaluation of the effects of urbanization and land use conversion, nonnative plants and ungulates, fire, and stochastic events on the coastal and lowland habitat of each of the seven *Hylaeus* bees, we determined these effects occur throughout the range of each species and will continue to occur into the future. While habitat degradation and destruction continues to reduce the amount of potentially suitable habitat available for foraging, predation by nonnative ants and likely predation by yellow jacket wasps are a significant threat to the seven species throughout their ranges, and, lacking any viable means of their control, will continue to occur into the future. Regulations are not in place at the local, State, or Federal level to adequately minimize the threat of habitat degradation and destruction from nonnative plants and ungulates. In addition, existing regulatory mechanisms are inadequate to prevent the introduction and spread of nonnative insect predators or competitors. We determined these threats occur throughout the range of each of the seven species of *Hylaeus* bees and will continue to occur into the future unless restriction on the introduction and the control of, nonnative plants and animals, are put in place. We believe the ability of the populations of the seven *Hylaeus* bees to stabilize or increase over the long term is highly diminished given the widespread landscape-level changes and the threats from predation and competition that are occurring. Thus, we believe the available information indicates the magnitude of threats is high.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure species that face actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. The threats to the seven Hawaiian yellow-faced bees are imminent because we have factual information that the threats are identifiable, and that all of the seven species are currently facing these threats throughout all portions of their ranges. The identifiable threats are covered in detail under the discussion of Factors A and E of this finding and include destruction or modification of their habitat, predation, inadequate existing regulatory mechanisms, and other natural or manmade factors such as small population size. In addition to their current existence, we expect these threats to continue and likely intensify into the foreseeable future.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The seven Hawaiian yellow-faced bees are valid taxa at the species level, and therefore receive a higher priority than subspecies or distinct population segments, but a lower priority than species in a monotypic genus.

The seven Hawaiian yellow-faced bees face high magnitude, imminent threats, and are valid taxa at the species level. Thus, in accordance with our LPN guidance, we have assigned each of the seven Hawaiian yellow-faced bees an LPN of 2. We will continue to monitor the threats to the seven *Hylaeus* bees and the species' status on an annual basis; should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

Work on a proposed listing determination for *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing

determinations for those species that were proposed for listing with funds from Fiscal Year 2011. This work includes all the actions listed in the tables below under expeditious progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we plan to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Pub. L. 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.'' Although that statement appeared to refer specifically to the ''to the maximum extent practicable'' limitation on the 90-day deadline for making a ''substantial information'' finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on April 15, 2011, Congress passed the Full-Year Continuing Appropriations Act (Pub. L. 112–10), which provides funding through September 30, 2011. The Service has $20,902,000 for the listing program. Of that, $9,472,000 is being used for determinations of critical habitat for already listed species. Also $500,000 is appropriated for foreign species listings under the Act. The Service thus has $10,930,000 available to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties

under existing funding levels, the Service is only able to initiate a few new listing determinations for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using $1,500,000 for work on listing actions for foreign species, which reduces funding available for domestic listing actions; however, currently only $500,000 has been allocated for this function. Although there are no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our record).

We assigned each of the seven species of Hawaiian yellow-faced bees an LPN of 2, based on our finding that each species faces immediate and high magnitude threats from the present or threatened destruction, modification, or curtailment of its habitat, the threat of predation from and competition with nonnative species, and from the inadequacy of existing regulatory mechanisms. In addition, *H. facilis, H. hilaris, H. kuakea,* and *H. mana* are each significantly threatened by small population size. Under our 1983 Guidelines, a ''species'' facing imminent high-magnitude threats is assigned an LPN of 1, 2, or 3 depending on its taxonomic status. Because *H. anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps,* and *H. mana* are species, we assigned each an LPN of 2 (the highest category available for a species). For the above reasons, funding a proposed listing determination for the seven species of Hawaiian yellow-faced bees is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a higher listing priority.

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Using these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed delisting rules for three species.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690
10/7/2010	12-month Finding on a Petition To list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting).	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition To List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered	Proposed Listing Endangered	75 FR 67551–67583
11/4/2010	12-Month Finding on a Petition To List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944
12/14/2010	Endangered Status for Dunes Sagebrush Lizard	Proposed Listing Endangered	75 FR 77801–77817
12/14/2010	12-Month Finding on a Petition To List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061
12/14/2010	12-Month Finding on a Petition To List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-Month petition finding, Warranted but precluded.	75 FR 78093–78146
12/15/2010	12-Month Finding on a Petition To List *Astragalus microcymbus* and *Astragalus schmolliae* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815
1/4/2011	90-Day Finding on a Petition To List the Red Knot subspecies *Calidris canutus roselaari* as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420
2/10/2011	12-Month Finding on a Petition To List the Pacific Walrus as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 7634–7679
2/17/2011	90-Day Finding on a Petition To List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 9309–9318
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR 9681–9692
2/22/2011	12-Month Finding on a Petition To List *Solanum conocarpum* (marron bacora) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 9722–9733
2/23/2011	12-Month Finding on a Petition To List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 9991–10003
2/23/2011	12-Month Finding on a Petition To List *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded & Not Warranted.	76 FR 10166–10203
2/24/2011	90-Day Finding on a Petition To List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10299–10310
2/24/2011	90-Day Finding on a Petition To List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10310–10319
3/8/2011	12-Month Finding on a Petition To List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 12667–12683
3/8/2011	90-Day Finding on a Petition To List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 12683–12690
3/10/2011	Initiation of Status Review for Longfin Smelt	Notice of Status Review	76 FR 13121–13122
3/15/2011	Withdrawal of Proposed Rule To List the Flat-Tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR 14210–14268
3/15/2011	Proposed Threatened Status for the Chiricahua Leopard Frog and Proposed Designation of Critical Habitat.	Proposed Listing Threatened; Proposed Designation of Critical Habitat.	76 FR 14126–14207
3/22/2011	12-Month Finding on a Petition To List the Berry Cave Salamander as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 15919–15932
4/1/2011	90-Day Finding on a Petition To List the Spring Pygmy Sunfish as Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 18138–18143
4/5/2011	12-Month Finding on a Petition To List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 18684–18701
4/5/2011	90-Day Finding on a Petition To List the Peary Caribou and Dolphin and Union Population of the Barren-Ground Caribou as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 18701–18706
4/12/2011	Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat.	Proposed Listing Endangered; Proposed Designation of Critical Habitat.	76 FR 20464–20488
4/13/2011	90-Day Finding on a Petition To List Spring Mountains Acastus Checkerspot Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 20613–20622
4/14/2011	90-Day Finding on a Petition To List the Prairie Chub as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 20911–20918
4/14/2011	12-Month Finding on a Petition To List Hermes Copper Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 20918–20939
4/26/2011	90-Day Finding on a Petition To List the Arapahoe Snowfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 23256–23265
4/26/2011	90-Day Finding on a Petition To List the Smooth-Billed Ani as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 23265–23271
5/12/2011	Withdrawal of the Proposed Rule To List the Mountain Plover as Threatened.	Proposed Rule, Withdrawal	76 FR 27756–27799

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
5/25/2011	90-Day Finding on a Petition To List the Spot-Tailed Earless Lizard as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 30082–30087
5/26/2011	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range With Special Rule.	Final Listing Threatened	76 FR 30758–30780
5/31/2011	12-Month Finding on a Petition To List Puerto Rican Harlequin Butterfly as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 31282–31294
6/2/2011	90-Day Finding on a Petition To Reclassify the Straight-Horned Markhor (*Capra falconeri jerdoni*) of Torghar Hills as Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 31903–31906
6/2/2011	90-Day Finding on a Petition To List the Golden-Winged Warbler as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 31920–31926
6/7/2011	12-Month Finding on a Petition To List the Striped Newt as Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 32911–32929
6/9/2011	12-Month Finding on a Petition To List *Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechera (Arabis) pusilla,* and *Penstemon gibbensii* as Threatened or Endangered.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 33924–33965
6/21/2011	90-Day Finding on a Petition To List the Utah Population of the Gila Monster as an Endangered or a Threatened Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36049–36053
6/21/2011	Revised 90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36053–36068
6/28/2011	12-Month Finding on a Petition To List *Castanea pumila* var. *ozarkensis* as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 37706–37716
6/29/2011	90-Day Finding on a Petition To List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 38095–38106
6/30/2011	12-Month Finding on a Petition To List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened With Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 38504–38532
7/12/2011	90-Day Finding on a Petition To List the Bay Skipper as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 40868–40871
7/19/2011	12-Month Finding on a Petition To List *Pinus albicaulis* as Endangered or Threatened With Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 42631–42654
7/19/2011	Petition To List Grand Canyon Cave Pseudoscorpion	Notice of 12-month petition finding, Not warranted.	76 FR 42654–42658
7/26/2011	12-Month Finding on a Petition To List the Giant Palouse Earthworm (*Drilolerius americanus*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44547–44564
7/26/2011	12-month Finding on a Petition To List the Frigid Ambersnail as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44566–44569
7/27/2011	Determination of Endangered Status for *Ipomopsis polyantha* (Pagosa Skyrocket) and Threatened Status for *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia).	Final Listing Endangered, Threatened.	76 FR 45054–45075
7/27/2011	12-Month Finding on a Petition To List the Gopher Tortoise as Threatened in the Eastern Portion of Its Range.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 45130–45162
8/2/2011	Proposed Endangered Status for the Chupadera Springsnail (*Pyrgulopsis chupaderae*) and Proposed Designation of Critical Habitat.	Proposed Listing Endangered	76 FR 46218–46234
8/2/2011	90-Day Finding on a Petition To List the Straight Snowfly and Idaho Snowfly as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 46238–46251
8/2/2011	12-Month Finding on a Petition To List the Redrock Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 46251–46266
8/2/2011	Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species.	Proposed Listing Endangered	76 FR 46362–46594
8/4/2011	90-Day Finding on a Petition To List Six Sand Dune Beetles as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial and substantial.	76 FR 47123–47133
8/9/2011	Endangered Status for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace.	Final Listing Endangered	76 FR 48722–48741
8/9/2011	12-Month Finding on a Petition To List the Nueces River and Plateau Shiners as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 48777–48788
8/9/2011	Four Foreign Parrot Species [crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo].	Proposed Listing Endangered and Threatened; Notice of 12-month petition finding, Not warranted.	76 FR 49202–49236
8/10/2011	Proposed Listing of the Miami Blue Butterfly as Endangered, and Proposed Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Proposed Listing Endangered Similarity of Appearance.	76 FR 49408–49412

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
8/10/2011	90-Day Finding on a Petition To List the Saltmarsh Topminnow as Threatened or Endangered Under the Endangered Species Act.	Notice of 90-day Petition Finding, Substantial.	76 FR 49412–49417
8/10/2011	Emergency Listing of the Miami Blue Butterfly as Endangered, and Emergency Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Emergency Listing Endangered Similarity of Appearance.	76 FR 49542–49567

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw) [5]	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw) [5]	12-month petition finding.
Longfin smelt	12-month petition finding.
Actions With Statutory Deadlines	
Casey's june beetle	Final listing determination.
6 Birds from Eurasia	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
Ozark hellbender [4]	Final listing determination.
Altamaha spinymussel [3]	Final listing determination.
6 Birds from Peru and Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service) [5]	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN) [5]	Final listing determination.
CA golden trout [4]	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mojave fringe-toed lizard [1]	12-month petition finding.
Kokanee—Lake Sammamish population [1]	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding/ Proposed listing.
Dusky tree vole	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Platte River caddisfly (from 206 species petition) [5]	12-month petition finding.
3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezii*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Mohave Ground Squirrel [1]	12-month petition finding.
Western gull-billed tern	12-month petition finding.
HI yellow-faced bees	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*) [1]	12-month petition finding.
Ashy storm-petrel [5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Southeastern pop. snowy plover & wintering pop. of piping plover [1]	90-day petition finding.
Eagle Lake trout [1]	90-day petition finding.
32 Pacific Northwest mollusk species (snails and slugs) [1]	90-day petition finding.
42 snail species (Nevada and Utah)	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
404 Southeast species	90-day petition finding.
Franklin's bumble bee [4]	90-day petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
American eel [4]	90-day petition finding.
Leona's little blue [4]	90-day petition finding.
Aztec gilia [5]	90-day petition finding.
White-tailed ptarmigan [5]	90-day petition finding.
San Bernardino flying squirrel [5]	90-day petition finding.
Bicknell's thrush [5]	90-day petition finding.
Chimpanzee	90-day petition finding.
Sonoran talussnail [5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami and Pectis imberbis*) [5]	90-day petition finding.
I'iwi [5]	90-day petition finding.
Humboldt marten	90-day petition finding.
Desert massasauga	90-day petition finding.
Western glacier stonefly (Zapada glacier)	90-day petition finding.
Thermophilic ostracod (Potamocypris hunteri)	90-day petition finding.
Sierra Nevada red fox [5]	90-day petition finding.
Boreal toad (eastern or southern Rocky Mtn population) [5]	90-day petition finding.
High-Priority Listing Actions	
20 Maui-Nui candidate species [2] (17 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)) [4].	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) [4]	Proposed listing.
Grotto sculpin (LPN = 2) [4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) [4]	Proposed listing.
Diamond darter (LPN = 2) [4]	Proposed listing.
Gunnison sage-grouse (LPN = 2) [4]	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2) [5]	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) [3].	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)) [3].	Proposed listing.
2 Texas plants (Texas golden gladecress (Leavenworthia texana) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2)) [3].	Proposed listing.
4 AZ plants (*Acuna cactus (Echinomastus erectocentrus var. acunensis*) (LPN = 3), Fickeisen plains cactus (*Pediocactus peeblesianus fickeiseniae*) (LPN = 3), Lemmon fleabane (*Erigeron lemmonii*) (LPN = 8), Gierisch mallow (*Sphaeralcea gierischii*) (LPN = 2)) [5].	Proposed listing.
FL bonneted bat (LPN = 2) [3]	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (*Consolea corallicola*) (LPN = 2), shellmound applecactus (*Harrisia* (= *Cereus*) *aboriginum* (= *gracilis*)) (LPN = 2), Cape Sable thoroughwort (*Chromolaena frustrata*) (LPN = 2)) [5].	Proposed listing.
21 Big Island (HI) species [5] (includes 8 candidate species—6 plants and 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)) [3].	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2)) [5]	Proposed listing.
Jemez Mountain salamander (LPN = 2) [5]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps, and *H. mana* will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of these species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the seven species of Hawaiian yellow-faced bees will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited in this document is available on the

Internet at *http://www.regulations.gov* and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 22, 2011.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–22433 Filed 9–2–11; 8:45 am]

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FEDERAL REGISTER

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No. 172 September 6, 2011

Part III

The President

Proclamation 8702—National Childhood Obesity Awareness Month, 2011

Federal Register
Vol. 76, No. 172
Tuesday, September 6, 2011

Presidential Documents

Title 3—

The President

Proclamation 8702 of August 31, 2011

National Childhood Obesity Awareness Month, 2011

By the President of the United States of America

A Proclamation

Since the 1970s, the rate of childhood obesity in our country has tripled, and today a third of American children are overweight or obese. This dramatic rise threatens to have far-reaching, long-term effects on our children's health, livelihoods, and futures. Without major changes, a third of children born in the year 2000 will develop Type 2 diabetes during their lifetimes, and many others will face obesity-related problems like heart disease, high blood pressure, cancer, and asthma. As a Nation, our greatest responsibility is to ensure the well-being of our children. By taking action to address the issue of childhood obesity, we can help America's next generation reach their full potential.

Together, we can stop this epidemic in its tracks. Over the last year and a half, the First Lady's *Let's Move!* initiative has brought together Federal agencies and some of the biggest corporations and nonprofits from across our country, working to meet our national goal of solving the problem of childhood obesity within a generation. *Let's Move!* aims to help ensure we can make healthy choices about the foods we eat and how much exercise we get, while building the habits necessary to tackle one of the most urgent health issues we face in this country. I invite all Americans to visit LetsMove.gov to learn more about this initiative and how to help children eat healthy and stay active.

Everyone has a role to play in preventing and reversing the tide of childhood obesity. This year, we announced groundbreaking partnerships with grocery stores and other retailers to increase access to healthy food in underserved areas. These stores have pledged to increase their fruit and vegetable offerings and to open new locations in communities where nutritious food is limited or unavailable. Childhood obesity cuts across all cultural and demographic lines, so *Let's Move!* has started initiatives to reach every cross-section of America, from urban and rural areas to schools, health clinics, and child care homes and centers. These programs touch everyone, from faith-based communities to Indian Country, empowering kids and their families to discover the fun in healthy eating and exercise.

Schools also have an important role in ensuring our children live full and active lives. Last December, I signed the Healthy, Hunger-Free Kids Act into law, enacting comprehensive change that will allow more children to eat healthier school lunches. One of the cornerstones of *Let's Move!* is the HealthierUS School Challenge. This year, America met the goal of doubling the number of schools meeting the Challenge's requirements for expanding nutrition and physical activity opportunities. These 1,250 schools have shown that together, we can go above and beyond to give our kids the healthy future they deserve.

We are coordinating across the Federal Government to make our goal a reality. This year, the Federal Government released updated Dietary Guidelines for Americans, providing a science-based roadmap for individuals to make healthy choices, and emphasizing the importance of good nutrition and an active lifestyle. We adapted the food pyramid to a new design—

MyPlate—to encourage balanced meals. And our Healthy People 2020 initiative incorporates childhood obesity prevention in its goals for increasing the health of all Americans.

Across our country, parents are working hard every day to make sure their kids are healthy, and my Administration is committed to supporting families in their efforts. During National Childhood Obesity Awareness Month, we recognize the outstanding work our businesses, communities, and families are doing to help us meet our responsibilities to our children. I urge all Americans to help us meet our goal of solving the problem of childhood obesity within a generation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2011 as National Childhood Obesity Awareness Month. I encourage all Americans to take action by learning about and engaging in activities that promote healthy eating and greater physical activity by all our Nation's children.

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

[FR Doc. 2011–22928
Filed 9–2–11; 11:15 am]
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Federal Register

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H.R. 2553/P.L. 112–27
Airport and Airway Extension Act of 2011, Part IV (Aug. 5, 2011; 125 Stat. 270)

H.R. 2715/P.L. 112–28
To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

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