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WHEN: Tuesday, October 23, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0722; Directorate Identifier 2011–NM–188–AD; Amendment 39–17214; AD 2012–20–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by reports of alternating current (AC) generator failures in-service due to incomplete fusion in the weld joint of the rotor band assembly. This AD requires inspecting the AC generator to determine the part number, and replacing the AC generator if necessary. We are issuing this AD to prevent rotor windings from coming in contact with the generator housing, which could result in debris contaminating and potentially blocking the engine oil scavenge system, leading to loss of oil pressure and an in-flight shutdown of the engine.

DATES: This AD becomes effective November 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 21, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mazdak Hobbi, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 24, 2012 (77 FR 43176). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> There have been several reports of AC Generator failures in-service. The root cause has been attributed to an incomplete fusion in the weld joint of the AC Generator rotor band assembly. If not rectified, the rotor band may fail allowing the rotor windings to come in contact with the generator housing. The resulting debris could contaminate and potentially block the engine oil scavenge system, leading to loss of oil pressure and an in-flight shutdown of the engine.
>
> Bombardier has issued Service Bulletin (SB) 84–24–45 to inspect, [replace with modified or new AC generator] and re-identify the affected AC generators to a new part number (P/N) 1152218–6 unit in order to rectify the problem and ensure integrity of the affected units.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 43176, July 24, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 43176, July 24, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 43176, July 24, 2012).

Costs of Compliance

We estimate that this AD will affect 83 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $14,110 or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 43176, July 24, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 adding the following new AD:

2012–20–08 Bombardier, Inc.: Amendment 39–17214. Docket No. FAA–2012–0722; Directorate Identifier 2012–NM–188–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 through 4338 inclusive, with Honeywell alternating current (AC) generator part number (P/N) 1152218–3, 1152218–4 or 1152218–5 installed.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by reports of AC generator failures in-service due to incomplete fusion in the weld joint of the rotor band assembly. We are issuing this AD to prevent rotor windings from coming in contact with the generator housing, which could result in debris contaminating and potentially blocking the engine oil scavenge system, leading to loss of oil pressure and an in-flight shutdown of the engine.

(f) Compliance

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

(g) Inspection and Replacement

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Inspect the left and right AC generators to determine if the AC generator has a part number identified in step 3.B.(2) of the Accomplishment Instructions of Bombardier Service Bulletin 84–24–45, dated January 13, 2011, or has P/N 1152218–3. If an AC generator has a part number identified in Bombardier Service Bulletin 84–24–45, dated January 13, 2011, or has P/N 1152218–3, before further flight, replace the AC generator with a modified or new AC generator having P/N 1152218–6, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–24–45, dated January 13, 2011.

(h) Parts Installation Prohibition

After the effective date of this AD, no person may install an AC generator having P/N 1152218–5, 1152218–4, or 1152218–3 on any airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–22, dated July 13, 2011; and Bombardier Service Bulletin 84–24–45, dated January 13, 2011; for related information.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bombardier Service Bulletin 84–24–45, dated January 13, 2011.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/index.html.*

Issued in Renton, Washington, on October 4, 2012.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–25108 Filed 10–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0755; Directorate Identifier 99–CE–65–AD; Amendment 39–17217; AD 2000–07–11 R1]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; rescission.

SUMMARY: We are rescinding an airworthiness directive (AD) for all Piaggio Aero Industries S.p.A Model P–180 airplanes. That AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. We issued that AD to prevent the brake hydraulic fluid from leaking because of the brake assembly rods contacting the brake valve tubing, which could result in the inability to adequately stop the airplane during ground operations. Since we issued that AD, we have determined this is no longer an unsafe condition and that regularly scheduled annual inspections address this subject.

DATES: This AD is effective November 21, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: Mike Kiesov, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by rescinding AD 2000–07–11 (65 FR 19305, April 11, 2000) that applies to the specified products. That NPRM was published in the **Federal Register** on July 19, 2012 (77 FR 42454). The MCAI states:

> After a 1999 training session during which conflicting inputs were given to the brake pads between pilot and copilot, a brake system rod was found deflected. The rod, in this bent condition, could possibly wear and damage the tubings connected to the brake valves, with consequent fluid leakage.
>
> Prompted by these findings, PAI issued Service Bulletin (SB) 80–0107, providing instructions for repetitive inspections of the affected rods and tubings. As this was considered to be a potentially unsafe condition, Registro Aeronautico Italiano (RAI), the predecessor of ENAC (Ente Nazionale per l'Aviazione Civile), issued Prescrizione di Aeronavigabilità (PA) No. 1999–219, which required the repetitive inspections as detailed in PAI SB 80–0107 and, depending on findings, replacement of rod or tubing.
>
> Since that AD was issued, the repetitive inspections of SB 80–0107 have been included as regular tasks into the maintenance schedule of both Avanti and Avanti II aeroplanes. In addition, no other cases of brake system bent rods have been reported, nor have any rods been replaced for damage in the P.180 fleet since that occurrence. Based on the available information, this is no longer considered to be an unsafe condition. Prompted by this determination, PAI issued Revision ZZ of SB 80–0107, which cancels the original SB 80–0107.
>
> For the reasons described above, this Notice is issued to cancel ENAC PA no. 1999–219 dated 03 May 1999.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 42454, July 19, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that rescinding the AD will not affect air safety and will reduce the burden on the public. We will rescind the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 42454, July 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 42454, July 19, 2012).

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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

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

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

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

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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) 2000–07–11, Amendment 39–11665 (65 FR 19305, April 11, 2000), and adding the following new AD:

2000–07–11 R1 Piaggio Aero Industries S.p.A.: Amendment 39–17217; Docket No. FAA–2012–0755; Directorate Identifier 99–CE–65–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 21, 2012.

(b) Affected ADs

This AD rescinds AD 2000–07–11 (65 FR 19305, April 11, 2000).

(c) Applicability

This AD applies to Piaggio Aero Industries S.p.A. Model P–180 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 32; Landing Gear.

Issued in Kansas City, Missouri, on October 9, 2012.

Earl Lawrence

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–25254 Filed 10–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0801; Directorate Identifier 2012–NM–106–AD; Amendment 39–17212; AD 2012–20–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–200 and –200C series airplanes. This AD was prompted by a report of elevator vibration and bearing swage failures. This AD requires, for certain airplanes, repetitive inspections for any discrepancies (such as a gap or a loose spacer) of the aft attach lugs for the elevator tab control mechanism, and replacement if necessary; and, for other airplanes, contacting the FAA for inspection or repair instructions and doing the work specified in those instructions. We are issuing this AD to detect and correct discrepancies in the aft attach lugs for the elevator tab control mechanism, which could result in elevator and tab vibration. Consequent structural failure of the elevator or horizontal stabilizer could result in loss of structural integrity and loss of airplane control.

DATES: This AD is effective November 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 21, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate; 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6490; fax: (425) 917–6590; email: *Kelly.McGuckin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on August 1, 2012 (77 FR 45513). That NPRM proposed to require, for certain airplanes, repetitive inspections for any discrepancies (such as a gap or a loose spacer) of the aft attach lugs for the elevator tab control mechanism, and replacement if necessary; and, for other airplanes, contacting the FAA for inspection or repair instructions and doing the work specified in those instructions.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing supports the NPRM (77 FR 45513, August 1, 2012).

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 45513, August 1, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 45513, August 1, 2012).

Costs of Compliance

We estimate that this AD affects 200 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for Group 2 airplanes.	7 work-hours × $85 per hour = $595 per inspection cycle.	$0	$595 per inspection cycle	$119,000 per inspection cycle.

For Group 1 airplanes, we do not have definitive data that would enable us to provide cost estimates for the action specified in this AD.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of a mechanism	7 work-hours × $85 per hour = $595	$29,289	$29,884

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

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 adding the following new airworthiness directive (AD):

2012–20–06 The Boeing Company: Amendment 39–17212; Docket No. FAA–2012–0801; Directorate Identifier 2012–NM–106–AD.

(a) Effective Date

This AD is effective November 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–200 and –200C series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–27A1302, dated April 24, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report of elevator vibration and bearing swage failures. We are issuing this AD to detect and correct discrepancies in the aft attach lugs for the elevator tab control mechanism, which could result in elevator and tab vibration. Consequent structural failure of the elevator or horizontal stabilizer could result in loss of structural integrity and loss of airplane control.

(f) Compliance

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

(g) Actions for Group 1 Airplanes

For Group 1 airplanes as identified in Boeing Alert Service Bulletin 737–27A1302, dated April 24, 2012: Within 1,500 flight cycles or 2,000 flight hours after the effective date of this AD, whichever occurs first, inspect the left and right elevator tab control mechanisms, and repair or replace as applicable, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(h) Inspection for Group 2 Airplanes

For Group 2 airplanes as identified in Boeing Alert Service Bulletin 737–27A1302, dated April 24, 2012: Within 1,500 flight cycles or 2,000 flight hours after the effective date of this AD, whichever occurs first, do a detailed inspection for any discrepancies of the inboard and outboard aft attach lugs of the left and right elevator tab control mechanisms, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1302, dated April 24, 2012. Repeat the detailed inspection thereafter at intervals not to exceed 1,500 flight cycles or 2,000 flight hours, whichever occurs first.

(i) Corrective Actions for Paragraph (h) of This AD

If any discrepancy is found during any inspection required by paragraph (h) of this AD, before further flight, replace the discrepant elevator tab control mechanism with a non-discrepant mechanism by doing the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Do a detailed inspection for discrepancies of the replacement elevator tab control mechanism; and, if no discrepancy is found, before further flight, install the replacement elevator tab control mechanism; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1302, dated April 24, 2012. If any discrepancy is found in that mechanism, then that mechanism may not be installed.

(2) Repeat the inspection on the installed replacement elevator tab control mechanism in accordance with the requirements of paragraph (h) of this AD.

(j) Inspection Report

Submit a report of the findings (both positive and negative) of the initial inspection required by paragraph (h) of this AD to Boeing Commercial Airlines Group, Attention: Manager, Airline Support, email: *rse.boecom@boeing.com;* at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Parts Installation Limitations

As of the effective date of this AD, no person may install an elevator tab control mechanism assembly, part number 65–79425–2, –3, –4, –5, or –6, on any airplane, unless the assembly has been inspected in

accordance with paragraph (i) of this AD both before and after installation.

(l) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(n) Related Information

For more information about this AD, contact Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6490; fax: (425) 917–6590; email: *Kelly.McGuckin@faa.gov*.

(o) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 737–27A1302, dated April 24, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*.

(4) You may view this service information at FAA, Transport Airplane Directorate; 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on September 28, 2012.

Ali Bahrami,

Manager, Transport Airplanes Directorate, Aircraft Certification Service.

[FR Doc. 2012–24949 Filed 10–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0493; Directorate Identifier 2011–NM–180–AD; Amendment 39–17213; AD 2012–20–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Airbus Model A318–111 and –112 airplanes; and all Model A319, A320, and A321 series airplanes. That AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. This new AD requires revising the maintenance program to incorporate revised fuel maintenance and inspection tasks, and adds airplanes to the applicability. This AD was prompted by Airbus issuing more restrictive maintenance requirements and/or airworthiness limitations. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective November 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 14, 2009 (74 FR 62219, November 27, 2009).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 28, 2007 (72 FR 40222, July 24, 2007).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 31, 2012 (77 FR 32060), and proposed to supersede AD 2007–15–06 R1, Amendment 39–16097 (74 FR 62219, November 27, 2009). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> The airworthiness limitations are currently published in the Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS).
>
> The Fuel Airworthiness Limitations (FAL) are specified in Airbus A318/A319/A320/A321 FAL Document reference 95A.1931/05, which is approved by the European Aviation Safety Agency (EASA) and referenced in the Airbus A318/A319/A320/A321 ALS Part 5.
>
> The issue 4 of Airbus A318/A319/A320/A321 FAL Document introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with these more restrictive maintenance requirements and airworthiness limitations contained in this document constitutes an unsafe condition.
>
> This [EASA] AD retains the requirement of EASA AD 2006–0203, which is superseded, and requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in Airbus A318/A319/A320/A321 FAL Document issue 4.

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

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Support for the NPRM (77 FR 32060, May 31, 2012)

US Airways stated it supports the intent of the NPRM (77 FR 32060, May 31, 2012).

Request To Delay Release of the Final Rule

US Airways requested that we postpone the release of the final rule until Airbus revises Airbus A318/A319/A320/A321 ALS Part 5—Fuel Airworthiness Limitations, dated February 28, 2006, as defined in Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005 (approved by EASA on March 14, 2006), Section 1, ''Maintenance/Inspection Tasks,'' to delete Task 470000–05–1. US Airways stated that, if Task 470000–05–1 is not deleted, the recurring maintenance cost will substantially increase as the air separation module (ASM) will have to be replaced at a cost of $27,000 every 4,000 flight hours.

We disagree with the request to delay release of this AD, since we have determined that an unsafe condition exists and any delay in releasing mitigation actions might not be in the interest of ensuring the safety of the United States fleet. ALS Task 470000–05–1 does not require replacement of the ASM every 4,000 flight hours, although it does require operators to return the ASM to the vendor for a workshop check. Airbus stated in their electronic mail referenced in US Airways' comment that it needs to do some design changes (software change) before it can revise ALS Task 470000–05–1. Therefore, operators may apply for an alternative method of compliance (AMOC) as specified by paragraph (l) of the AD if ALS Task 470000–05–1 is revised in the future.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 32060, May 31, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 32060, May 31, 2012).

Costs of Compliance

We estimate that this AD will affect about 745 products of U.S. registry.

The actions that are required by AD 2007–15–06 R1, Amendment 39–16097 (74 FR 62219, November 27, 2009), and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it will take about 2 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $126,650, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 32060, May 31, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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) 2007–15–06 R1, Amendment 39–16097 (74 FR 62219, November 27, 2009), and adding the following new AD:

2012–20–07 Airbus: Amendment 39–17213. Docket No. FAA–2012–0493; Directorate Identifier 2011–NM–180–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 21, 2012.

(b) Affected ADs

This AD supersedes AD 2007–15–06 R1, Amendment 39–16097 (74 FR 62219, November 27, 2009).

(c) Applicability

(1) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all serial numbers.

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

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Reason

This AD was prompted by Airbus issuing more restrictive maintenance requirements and/or airworthiness limitations. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Revision of the Airworthiness Limitations Section (ALS) To Incorporate Fuel Maintenance and Inspection Tasks

This paragraph restates the requirements of paragraph (f) of AD 2007–15–06 R1, Amendment 39–16097 (74 FR 62219, November 27, 2009). For Model A318–111 and –112 airplanes, and Model A319, A320, and A321 airplanes: Within 3 months after August 28, 2007 (the effective date of AD 2007–15–06, Amendment 39–15135 (72 FR 40222, July 24, 2007)), revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A318/A319/A320/A321 ALS Part 5–Fuel Airworthiness Limitations, dated February 28, 2006, as defined in Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005 (approved by the European Aviation Safety Agency (EASA) on March 14, 2006), Section 1, ''Maintenance/Inspection Tasks''; or Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008 (approved by the EASA on December 19, 2008), Section 1, ''Maintenance/Inspection Tasks.'' For all tasks identified in Section 1 ''Maintenance/Inspection Tasks,'' of Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005; or Issue 2, dated July 8, 2008; the initial compliance times start from August 28, 2007 (the effective date of AD 2007–15–06), and the repetitive inspections must be accomplished thereafter at the intervals specified in Section 1, ''Maintenance/Inspection Tasks,'' of Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005; or Issue 2, dated July 8, 2008.

Note 1 to paragraph (g) of this AD: Airbus Operator Information Telex (OIT) SE 999.0076/06, dated June 20, 2006, provides guidance on identifying the applicable sections of the Airbus A318/A319/A320/A321 Airplane Maintenance Manual for accomplishing the tasks specified in Section 1 ''Maintenance/Inspection Tasks,'' of Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005; or Issue 2, dated July 8, 2008.

(h) Retained Revision of the ALS to Incorporate CDCCLs

This paragraph restates the requirements of paragraph (g) of AD 2007–15–06 R1, Amendment 39–16097 (74 FR 62219, November 27, 2009). For Airbus Model A318–111 and –112 airplanes, and Model A319, A320, and A321 airplanes: Within 12 months after August 28, 2007 (the effective date of AD 2007–15–06, Amendment 39–15135 (72 FR 40222, July 24, 2007)), revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A318/A319/A320/A321 ALS Part 5–Fuel Airworthiness Limitations, dated February 28, 2006, as defined in Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005 (approved by the EASA on March 14, 2006), Section 2, ''Critical Design Configuration Control Limitations''; or Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008 (approved by EASA on December 19, 2008), Section 2, ''Critical Design Configuration Control Limitations.''

(i) Retained Requirement: No Alternative Inspections, Inspection Intervals, or CDCCLs

(1) This paragraph restates the requirements of paragraph (h) of AD 2007–15–06 R1, Amendment 39–16097 (74 FR 62219, November 27, 2009). Except as provided by paragraph (l) of this AD: After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used.

(2) Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS, as required by paragraphs (g) and (h) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

(j) New Revision of the Maintenance Program

Within 6 months after the effective date of this AD: Revise the maintenance program to incorporate the new or revised tasks, life limits, and CDCCLs specified in Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 4, dated August 26, 2010, except as required in paragraph (j)(4) of this AD. The initial compliance times and intervals are stated in this ALS document, except as required in paragraphs (j)(1) through (j)(4) of this AD, or within 6 months after the effective date of this AD, whichever occurs later. For certain tasks, the compliance times depend on the pre-modification and post-modification status of the airplane. Incorporating the requirements of this paragraph terminates the corresponding requirements of paragraphs (g) and (h) of this AD.

(1) For airplanes for which the first flight occurred before August 28, 2007 (the effective date of AD 2007–15–06, Amendment 39–15135 (72 FR 40222, July 24, 2007)), the first accomplishment of Tasks 281800–01–1, Functional Check of Tank Vapour Seal and Vent Drain System; and 281800–02–1, Detailed Inspection of Vapour Seal; must be performed no later than 11 months after the effective date of this AD.

(2) The first accomplishment of Tasks 470000–01–1, Operational Check of Dual Flapper Shutoff Valves (DFSOV), Dual Flapper Check Valves and Nitrogen Enriched Air (NEA) Line for Leaks; 470000–02–1, Operational Check of Both Dual Flapper Check Valves for Leaks; 470000–03–1, Operational Check of Dual Flapper Check Valves for Reverse Flow and NEA Line for Leaks; 470000–04–1, Operational Check of Dual Flapper Check Valves for Reverse Flow; and 470000–05–1, Remove Air Separation Module (ASM) and Return to Vendor for Workshop Check; must be calculated, in accordance with paragraph (j)(2)(i) or (j)(2)(ii) of this AD.

(i) From the airplane first flight for airplanes on which Airbus modification 38062 or 38195 has been embodied in production.

(ii) From the in-service installation of the fuel tank inerting system specified in Airbus Service Bulletin A320–47–1001, Airbus Service Bulletin A320–47–1002, Airbus Service Bulletin A320–47–1003, Airbus Service Bulletin A320–47–1004, Airbus Service Bulletin A320–47–1006, or Airbus Service Bulletin A320–47–1007.

(3) Although Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 4, dated August 26, 2010, does not refer to Airbus Service Bulletin A320–47–1006 and Airbus Service Bulletin A320–47–1007, the tasks apply as specified in paragraphs (j)(3)(i) through (j)(3)(iv) of this AD.

(i) Tasks 470000–01–1, Operational Check of DFSOV, Dual Flapper Check Valves and NEA Line for Leaks; and 470000–02–1, Operational Check of Both Dual Flapper Check Valves for leaks; apply to airplanes that have previously accomplished the actions specified in Airbus Service Bulletin A320–47–1007.

(ii) Task 470000–03–1, Operational Check of Dual Flapper Check Valves for Reverse Flow and NEA Line for Leaks, applies to airplanes that have previously accomplished the actions specified in Airbus Service Bulletin A320–47–1006, and that have not accomplished the actions specified in Airbus Service Bulletin A320–47–1007.

(iii) Task 470000–04–1, Operational Check of Dual Flapper Check Valves for Reverse

Flow, applies to airplanes in post-modification 38195 configuration and that have not accomplished the actions specified in Airbus Service Bulletin A320–47–1007.

(iv) Task 470000–05–1, Remove ASM and return to Vendor for Workshop Check, applies to airplanes that have previously accomplished the actions specified in Airbus Service Bulletin A320–47–1007, and are in pre-modification 151529 configuration.

(4) Replace each ASM identified in table 1 to paragraph (g)(4) of this AD in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA (or its delegated agent). The compliance time for the replacement is before the accumulation of 27,000 total flight hours (component time)—i.e., the life limitation.

Note 2 to paragraph (g)(4) of this AD: Airbus A318/A319/A320/A321 Aircraft Maintenance Manual Task 47–10–43–920–001–A, Air Separation Module Replacement, is an additional source of guidance for accomplishment of the removal and replacement of the ASM.

TABLE 1 TO PARAGRAPH (g)(4) OF THIS AD—ASM REPLACEMENT

ASM Part Number—	Affected Airplane Configuration—
2060017–101	Post-modification 38062, or Post-Airbus Service Bulletin A320–47–1002, or Post-Airbus Service Bulletin A320–47–1004, or Post-Airbus Service Bulletin A320–47–1007
2060017–102	Post-modification 152033, or Post-Airbus Service Bulletin A320–47–1011

(k) New Requirement: No Alternative Actions, Intervals, and/or CDCCLs

After accomplishing the revisions required by paragraph (j) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used other than those specified in Airbus A318/A319/A320/A321 ALS Part 5–Fuel Airworthiness Limitations, dated February 28, 2006, as defined in Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 4, dated August 26, 2010, unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (l)(1) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(m) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0155, dated August 25, 2011, and the service information specified in paragraphs (m)(1) through (m)(4) of this AD, for related information.

(1) Airbus A318/A319/A320/A321 ALS Part 5–Fuel Airworthiness Limitations, dated February 28, 2006.

(2) Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005.

(3) A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008.

(4) Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 4, dated August 26, 2010.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on November 21, 2012.

(i) Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 4, dated August 26, 2010.

(ii) Reserved.

(4) The following service information was approved for IBR on December 14, 2009 (74 FR 62219, November 27, 2009).

(i) Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008.

(ii) Reserved.

(5) The following service information was approved for IBR on August 28, 2007 (72 FR 40222, July 24, 2007).

(i) Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005.

(ii) Airbus A318/A319/A320/A321 ALS Part 5–Fuel Airworthiness Limitations, dated February 28, 2006.

(6) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*.

(7) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(8) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on October 2, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–24953 Filed 10–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 120416007–2464–01]

RIN 0648–BB67

Fisheries of the Exclusive Economic Zone Off Alaska; Monitoring and Enforcement Requirements in the Bering Sea and Aleutian Islands Freezer Longline Fleet; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting a final rule that published on September 26, 2012, modifying equipment and operational requirements for freezer longliners (catcher/processors) named on License Limitation Program (LLP) licenses endorsed to catch and process Pacific cod at sea with hook-and-line gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This final rule removes Western Alaska Community Development Quota (CDQ) collection-of-information requirements under OMB control number 0648–0269 for the alternative fishing plan and its public reporting burden per response of 4 hours, because the alternative fishing plan regulations are no longer necessary.

DATES: Effective October 17, 2012, and is applicable beginning October 26, 2012.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the final rule modifying equipment and operational requirements for freezer longliners published September 26, 2012, NMFS inadvertently omitted a paragraph in the classification section that addresses OMB Control Number 0648–0269 collection-of-information requirements associated with regulations removed by the final rule.

The final rule removed the regulations at § 679.32(e)(3) that allow CDQ groups to propose to NMFS an alternative fishing plan to use only one observer where two are required, to sort and weigh catch by species on processor vessels, or to use larger sample sizes than those that can be collected by one observer. The final rule standardized the observer coverage and catch monitoring options for longline catcher/processors in both the CDQ and non-CDQ fisheries because the monitoring and enforcement challenges in these fisheries are similar. Because the final rule standardized observer coverage requirements between the CDQ and non-CDQ fisheries, the alternative fishing plan regulations were no longer necessary. All of the language in the regulatory text and preamble text was correct. However, the notice of the removal of the collection-of-information requirements under the Office of Management and Budget control number 0648–0269 was inadvertently omitted from the final rule. This notice corrects that omission.

Correction

In rule document 2012–23721 published on September 26, 2012, (77 FR 59053) make the following correction:

1. On page 59059, in column 1, after heading OMB Control No. 0648–0213 and following the paragraph, insert the following heading and text:

''OMB Control No. 0648–0269

This final rule removes collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under Control Number 0648–0269. The collection-of-information requirement, ''alternative fishing plan'' and its public reporting burden per response of 4 hours, will be removed from the collection because the alternative fishing plan regulations are no longer necessary.''

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; 44 U.S.C. 3501 *et seq.*

Dated: October 11, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–25567 Filed 10–16–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0559]

RIN 1625–AA08

Special Local Regulations; 2012 Ironman 70.3 Miami, Biscayne Bay; Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of Biscayne Bay, east of Bayfront Park, in Miami, Florida during the 2012 Ironman 70.3 Miami, a triathlon. The Ironman 70.3 Miami is scheduled to take place on Sunday, October 28, 2012. Approximately 2,500 participants are anticipated to participate in the swim. No spectators are expected to be present during the event. The special local regulation is necessary to provide for the safety of the participants, participant vessels, and the general public on the navigable waters of the United States during the event. The special local regulation establishes an area that will encompass the event area. Non-participant persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 6:45 a.m. until 9:45 a.m. on October 28, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0559. To view documents mentioned in this preamble go to *http://www.regulations.gov,* inserting USCG–2012–0559 in the ''Search'' box, and click ''Search.'' Click on the Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On July 30, 2012, we published a Notice of Proposed Rulemaking (NPRM) entitled USCG–2012–0559 in the **Federal Register** (77 FR 2012–18455). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

(a) The legal basis for this rule is the Coast Guard's authority to establish special local regulations pursuant to: 33 U.S.C. 1233.

(b) The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Ironman 70.3 Miami.

C. Discussion of Comments, Changes, and the Final Rule

The Coast Guard did not receive any comments to the proposed rule, and no changes were made to the regulatory text.

On October 28, 2012, Miami Tri Events is sponsoring the Ironman 70.3, a triathlon. The swim portion of the event will be held on the waters of Biscayne Bay, Miami, Florida. Approximately 2,500 participants are anticipated to participate in the event. No spectator vessels are expected during the event.

The temporary final rule establishes a special local regulation that will encompass certain waters of Biscayne Bay, Miami, Florida. The special local regulation will be enforced from 6:45 a.m. until 9:45 a.m. on October 28, 2012. The special local regulation will establish an area around the event where all non-participant persons and vessels are prohibited from entering, transiting though, anchoring in, or remaining within. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami via telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the event area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only 3 hours; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the event area if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not authorized by the Captain of the Port Miami or designated representative to enter, transit through, anchor in, or remain within the event area may operate in the surrounding area during the enforcement periods; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Biscayne Bay encompassed within the special local regulation from 6:45 a.m. until 9:45 a.m. on October 28, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). Due to potential environmental issues, we conducted an environmental analysis for both the issuance of the marine event permit and the establishment of this special local regulation. After completing the environmental analysis for the issuance of the marine event permit and the establishment of these special local regulations, we have determined these actions will not significantly affect the human environment. This rule is categorically excluded from further review under paragraph 34(h) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–0559 to read as follows:

§ 100.35T07–0559 Special Local Regulation; Ironman 70.3 Miami, Biscayne Bay; Miami, FL.

(a) *Regulated Area.* The following regulated area is a special local regulation. All waters of Biscayne Bay located east of Bayfront Park and encompassed within an imaginary line connecting the following points: starting at Point 1 in position 25°46′44″ N, 080°11′00″ W; thence southeast to Point 2 in position 25°46′24″ N, 080°10′44″ W; thence southwest to Point 3 in position 25°46′18″ N, 080°11′05″ W; thence north to Point 4 in position 25°46′33″ N, 080°11′05″ W; thence northeast back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.*

(1) Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Non-participant Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 6:45 a.m. until 9:45 a.m. on October 28, 2012.

Dated: September 28, 2012.

Chris P. Scraba,

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

[FR Doc. 2012–25570 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0721]

RIN 1625–AA08

Special Local Regulations; Palm Beach World Championship, Atlantic Ocean; Jupiter, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of the Atlantic Ocean, between East Indiantown Road and Donald Ross Road, just offshore of Jupiter, Florida during the Palm Beach World Championship, a high speed power boat race. The Palm Beach World Championship is scheduled to take place on Friday, October 19, and Sunday, October 21, 2012. The high speed power boat race event will include approximately 50 high speed power boat participants and 250 spectator vessels. The special local regulation is necessary to provide safety for the participants, spectators, and general public in and near the race area during the event. The special local regulation will encompass the following two areas: a race area, where all persons and vessels, except those persons and vessels participating in or assisting the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; and

a spectator area, where vessels are permitted to anchor.

DATES: This rule is effective and will be enforced from 11 a.m. until 4 p.m. on October 19, and 11 a.m. until 4 p.m. on October 21, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0721. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* inserting USCG–2012–0721 in the ''SEARCH'' box, and then clicking ''SEARCH.'' Click on the Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the event until August 22, 2012. As a result, the Coast Guard did not have sufficient time to publish a NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during the Palm Beach World Championship.

C. Discussion of the Final Rule

On October 19 and October 21, 2012, Offshore Powerboat Association, Inc. will host the Palm Beach World Championship, a series of high-speed boat races. The event will be held on the waters of the Atlantic Ocean, just offshore of Jupiter, Florida. The high speed power boat race event will include approximately 50 high speed power boat participants and 250 spectator vessels.

The special local regulation encompasses certain waters of the Atlantic Ocean, near Jupiter, Florida. The special local regulation will be enforced daily from 11:00 a.m. until 4:00 p.m. on October 19 and October 21, 2012. The special local regulation will encompass the following two areas: (1) A race area, where all persons and vessels, except those persons and vessels participating or assisting in the high speed power boat race event, are prohibited from entering, transiting through, anchoring in, or remaining within; and (2) a spectator area, where vessels are permitted to anchor. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port Miami via telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only five hours per day over the course of two days, ten hours total; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the race area if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not able to enter, transit through, anchor in, or remain within the race area may operate in the surrounding area during the enforcement periods; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the special local regulation from 11 a.m. until 4 p.m. on

October 19, and 11 a.m. until 4 p.m. October 21, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). This rule involves special local regulations issued in conjunction with a marine event. An Environmental Analysis was prepared and addressed both the issuance of the marine event permit and the establishment of the special local regulation. Both the Environmental Analysis and the accompanying Finding Of No Significant Impact (''FONSI'') are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T07–0721 to read as follows:

§ 100.35T07–0721 Special Local Regulations; Palm Beach World Championship, Atlantic Ocean, Jupiter, FL.

(a) *Regulated areas.* The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Race area.* All waters of the Atlantic Ocean east of Jupiter, FL encompassed within an imaginary line connecting the following points: starting at Point 1 in position 26°56′06″ N, 80°04′06″ W; thence northeast to Point 2 in position 26°56′11″ N, 80°03′38″ W; thence southeast to Point 3 in 26°53′11″ N, 80°02′35″ W; thence southwest to Point 4 in position 26°53′03″ N, 80°03′06″ W; thence northwest back to origin. All persons or vessels, except those persons or vessels participating in or assisting in the high speed power boat race event, are prohibited from entering, transiting through, anchoring in, or remaining within the race area without authorization from the Captain of the Port Miami or a designated representative.

(2) *Spectator area.* All waters of the Atlantic Ocean east of Jupiter, FL and east of the race area, encompassed within an imaginary line connecting the

following points: starting at Point 1 in position 26°55′46″ N, 80°03′30″ W; thence northeast to Point 2 in position 26°55′48″ N, 80°03′22″ W; thence southeast to Point 3 in 26°53′58″ N, 80°02′44″ W; thence southwest to Point 4 in position 26°53′56″ N, 80°02′51″ W; thence northwest back to origin. Vessels are permitted to anchor in this area.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.* (1) Persons and vessels desiring to enter, transit through, anchor in, or remain within the race area may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(2) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(c) *Enforcement date.* This rule will be enforced from 11 a.m. until 4 p.m. on October 19, and from 11 a.m. until 4 p.m. on October 21, 2012.

Dated: October 2, 2012.

C. P. Scraba,

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

[FR Doc. 2012–25646 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0808]

Drawbridge Operation Regulations; Old River, Orwood, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of cancellation of a temporary deviation from regulations.

SUMMARY: The Coast Guard is canceling the temporary deviation concerning the Burlington Northern & Santa Fe Railroad (BNSF) Drawbridge across Old River, mile 10.4, at Orwood, CA. This cancellation was requested by the bridge owner due to their inability to operate the BNSF Middle River drawbridge as an alternative path for navigation.

DATES: The temporary deviation published on September 21, 2012 (77 FR 58491) is cancelled as of October 17, 2012.

ADDRESSES: The docket for this cancelled deviation is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2012–0808 in the ''Keyword'' box and then clicking ''Search''.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.*

SUPPLEMENTARY INFORMATION:

A. Basis and Purpose

On September 21, 2012, we published a temporary deviation entitled ''Drawbridge Operation Regulation; Old River, Orwood CA'' in the **Federal Register** (77 FR 58491). The temporary deviation concerned the Burlington Northern & Santa Fe Railroad (BNSF) Drawbridge across Old River, mile 10.4, at Orwood, CA. The deviation was to allow the bridge owner to perform essential mechanical repairs while the bridge remained in the closed-to-navigation position from 8 a.m. October 22, 2012 to 4 p.m. on October 26, 2012. This deviation from the operating regulations was authorized under 33 CFR 117.35.

B. Cancellation

The temporary deviation is canceled due the unexpected unavailability of an alternative path for navigation during the proposed times and dates of the repair work.

Dated: October 5, 2012.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2012–25539 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0628]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Newport River, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operating schedule that governs the Carolina Coastal Railroad Bridge, at AIWW mile 203.8, across Newport River in Morehead City, NC. This bridge is presently maintained in the open position except when closure is necessary for train crossings. This change would allow the bridge to remain closed at night so that necessary repairs may be made while still providing for the reasonable needs of navigation.

DATES: This temporary final rule is effective from 5 a.m. on October 17, 2012 to 8:30 p.m. on October 1, 2013.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0628 and are available online by going to *www.regulations.gov,* and inserting USCG–2012–0628 in the ''Keyword'' box, and then clicking ''Search''. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at telephone (757) 398–6587, email *terrance.a.knowles@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
U.S.C United States Code

A. Regulatory History and Information

On August 10, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operations; Atlantic Intracoastal Waterway (AIWW), Newport River, Morehead City, NC.'' in the **Federal Register** (77 FR 47787). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. Due to these bridge repairs being required and also being a lengthy process, it is best that this work be done when there is the least marine activity, such as during the winter and night time. Starting the project now will possibly shorten the 2013 summertime impacts to navigation, depending on expected project tempo/efficiency. Also, replacement of the obsolete drive system will allow for a safer/faster way to close the bridge during approaching hurricanes for the 2013 storm season and beyond.

B. Basis and Purpose

The North Carolina Department of Transportation (NCDOT), who owns and operates this bascule-type railroad bridge, has requested a temporary change to the existing operating regulations to facilitate repairs of existing structural steel, strengthening of the main bascule girders and upgrading the obsolete drive system. The current regulations, under the general requirements set out at 33 CFR 117.5, require that the Carolina Coastal Railroad Bridge, at AIWW mile 203.8, across Newport River in Morehead City NC, shall open promptly and fully for the passage of vessels when a request to open is given. However, the drawbridge is currently maintained in the open to navigation position at all times and closes for passing trains.

In the closed position to vessels, this single-leaf bascule drawbridge has a vertical clearance of 4 feet above mean high water.

To facilitate the required repair work and to minimize the impact on navigation, the drawbridge would operate as follows: (1) From 5 a.m. October 17, 2012 to 8:30 p.m. on October 1, 2013 shall be maintained in the open position to vessels and would only be closed for the passage of trains and to perform periodic maintenance; and (2) in the closed position to vessels, from 8:30 p.m. to 5 a.m., with one optional opening provided at 12 a.m. (midnight) for vessels providing advance notice before 4 p.m. on the afternoon before the requested opening.

Vessel traffic along this part of the Atlantic Intracoastal Waterway consists of commercial and pleasure craft including sail boats, fishing boats, and tug and barge traffic, that transit mainly during the daylight hours with the occasional tug and barge traffic at night. The drawbridge is currently maintained in the open to navigation position at all times and closes for passing trains. Consequently, the number of mariners transiting through this section of the waterway is not based on the amount of vessel openings but on the average number of waterway users, which showed that there are fewer vessel transits at night for mariners, making it a more suitable time to restrict the operation of the drawbridge.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 30 days and no comments were received. The Coast Guard would temporarily revise the operating regulations at 33 CFR 117.821 by adding a new paragraph (c). Paragraph (c) would state from 5 a.m. on October 17, 2012 to 8:30 p.m. on October 1, 2013, the draw of the Carolina Coastal Railroad Bridge shall be maintained in the open position to vessels, and would only be closed for the passage of trains and to perform periodic maintenance; and the draw need not open from 8:30 p.m. to 5 a.m., except at 12 a.m. (midnight) for vessels providing advance notice before 4 p.m. on the afternoon before the requested opening.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The temporary changes are expected to have minimal impact on mariners due to the low number of vessels transiting this area at night. Also, a midnight vessel opening would be available each night for vessels requiring an opening provided that advance notice is given by 4 p.m. on the afternoon before the requested opening.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities because the rule adds navigational restrictions mainly to the movement of vessels during a time when there is less traffic. Most commercial traffic will leave and return during the day. The rule would possibly affect small entities such as owners/operators of vessels due to limited drawbridge openings from 8:30 p.m. to 5 a.m. To minimize delays, these vessels can plan their transits in accordance with the proposed opening schedule.

3. Assistance for Small Entities

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

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

about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.821, add paragraph (c) to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach.

* * * * *

(c) From 5 a.m. on October 17, 2012 to 8:30 p.m. on October 1, 2013, the draw of the Carolina Coastal Railroad Bridge, at mile 203.8, (Newport River) at Morehead City, shall operate as follows:

(1) During the day from 5 a.m. to 8:30 p.m., shall be maintained in the open position to vessels and would only be closed for the passage of trains and to perform periodic maintenance.

(2) At night, need not open 8:30 p.m. to 5 a.m. except an opening would be provided at 12 a.m. (midnight) if advance notice is given before 4 p.m. on the afternoon before the requested opening.

Dated: October 5, 2012.

Lincoln D. Stroh,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 2012–25540 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0625]

RIN 1625–AA09

Drawbridge Operation Regulation; Schuylkill River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation that governs the operation of the Conrail Bridge over the Schuylkill River, mile 6.4 near Christian Street, at Philadelphia, PA. The new rule will change the bridge name to CSX Bridge and the current regulation requiring a two hour advance notice to allow the bridge to remain in the closed position for the passage of vessels. There have been no requests for openings in 13 years.

DATES: This rule is effective November 16, 2012.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2012–0625 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0625 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Jim Rousseau, Bridge Management Specialist, Fifth Coast Guard District; telephone 757–398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Regulatory History and Information

On August 10, 2012, we published a NPRM entitled Drawbridge Operation Regulation; Schuylkill River, Philadelphia, PA in the FR (77 FR 47792). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

CSX Transportation has requested a change in name and the operation regulation of the Conrail Bridge across Schuylkill River, mile 6.4, at Philadelphia PA. In 1999, CSX acquired the Conrail Bridge but never changed the name. From the time of purchase up to the present day, the Conrail Bridge has been an active and heavily used CSX railroad line. The bridge supports 51 MGT of freight every year. However, over the past 13 years the bridge logs show that there has been no request requiring an opening at the bridge. Therefore, the Coast Guard authorizes the above mentioned bridge to remain in the closed to navigation position in accordance with 33 CFR 117.39.

The vertical clearance of the Swing Bridge is 26 feet above mean high tide in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.905(e). The current two hour advance notice is no longer necessary because of the lack of openings.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard will revise 33 CFR 117.905(e) for the Conrail Bridge over Schuylkill River, mile 6.4, at Philadelphia, PA. The current regulation states: The draw of the Conrail Bridge, mile 6.4 near Christian Street, Philadelphia, shall open on signal if at least two hours notice is given. The new regulation would change the bridge name to CSX Bridge and allow the bridge to not open for the passage of vessels. The change of the operating regulation will reflect the current use of the waterway and not inhibit those vessels from transiting under the bridge. Pursuant to the NPRM, there was a comment period of 30 days and no comments were received.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The change is expected to have minimal impact on mariners, because there have been no requests for openings for the past 13 years, and there is no anticipated change to vessel traffic.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This final rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit in that portion of the Schuylkill River that have a mast height of greater than 26 feet. Due to the fact that there have been no requests for openings in 13 years, this final rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.905(e) to read as follows:

§ 117.905 Schuylkill River.

* * * * *

(e) The draw of the CSX Bridge, mile 6.4 near Christian Street, Philadelphia, need not be opened for the passage of vessels.

Dated: September 28, 2012.

Steven H. Ratti,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2012–25550 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0738]

RIN 1625–AA00

Fixed and Moving Safety Zone; Around the USACE Bank Grading Units, Mat Sinking Unit, and the M/V Harrison and M/V William James

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed and moving safety zone for all waters within 100 yards of the US Army Corps of Engineers (USACE) Bank Grading Units, Mat Sinking Unit and M/V Harrison and M/V William James while operating on the Mississippi River. This safety zone is needed to protect vessels and mariners from the safety hazards associated with bank grading and mat sinking operations performed by the USACE. Entry into this zone is prohibited unless specifically authorized by the cognizant Captain of the Port (COTP) (COTP Lower Mississippi River for MM 303.0 to MM 869.0 or COTP Ohio Valley MM 869.0 to MM 958.0) or a designated representative.

DATES: This rule is effective with actual notice from July 31, 2012 until October 17, 2012. This rule is effective in the *Code of Federal Regulations* from October 17, 2012 until 8:00 a.m. November 1, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0738. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO David Bear, U. S. Coast Guard; telephone 901–521–4728, *email david.m.bear@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
M/V Motor Vessel
COTP Captain of the Port
MM Mile Marker
USACE United States Army Corps of Engineers

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as publication of an NPRM would be impracticable. The Coast Guard received notification from the USACE on or about July 13, 2012 about necessary bank grading and mat laying operations by the Vicksburg District USACE.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing a full 30 days notice before the final rule effective date is would be impracticable for the reasons described above. Immediate action implementing this safety zone is needed to protect persons and property from the safety hazards associated with bank grading and mat sinking operations on the Mississippi River.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The COTPs Lower Mississippi River and Ohio Valley received notification from the USACE that the USACE will be performing bank grading and mat sinking operations on the Mississippi River. These operations are vital in maintaining a navigable channel for commerce to operate on the river and can only be done during certain times of the year, and under specific water levels and conditions. The fact that the operations are taking place on a highly transited waterway presents hazards to both the waterway traffic and the workers involved in the operations. A fixed and moving safety zone is needed to protect mariners, workers, vessels and other property from the hazards associated with bank grading and mat laying operations. Additionally, a fixed and moving safety zone will assist in timely completion of the USACE operations.

The USACE also requested that the Coast Guard implement a safety zone restricting traffic on the waterway to protect both mariners and persons involved in the operations, specifically the Bank Grading Units, Mat Sinking Unit, and the M/V Harrison and M/V William James and any other operating units. The USACE informed the USCG that during the effective period, USACE operations will require waterway closures lasting approximately one hour at a time when no traffic will be allowed to transit within 500 yards of the operations. Broadcast Notices to Mariners (BNM) and Marine Safety Information Bulletins (MSIBs) can be issued by the Coast Guard to inform marine traffic of these times based on notice provided by the USACE.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary fixed and moving safety zone for all waters within 100 yards of the USACE Bank Grading Unit, Mat Sinking Unit, and the M/V Harrison and M/V William James while conducting operations on the Mississippi River. This safety zone is intended to protect persons and property, providing the necessary safety measures affording the USACE to continue with ongoing and timely USACE operations necessary to maintain the commercial channel for the designated areas on the Mississippi River. While these operations are taking place, vessels are required to operate at a minimum safe speed when transiting within all waters encompassing a 100 yard radius around the USACE operating units and vessels are prohibited from transiting into, through, or within a 50 yard radius of the USACE operating units and vessels, unless specifically authorized as explained below. Anchoring, stopping, remaining or drifting without power within the safety zone is prohibited at all times.

Requests to deviate from these restrictions may be made to the applicable COTP and will be considered on a case-by-case basis. The COTP Lower Mississippi River may be contacted by telephone at 866–777–2784. The COTP Ohio Valley may be contacted at 1–800–253–7465. All COTPs can be reached by VHF–FM channel 16. The respective Captain of the Port or a designated representative will inform the public through broadcast notice to mariners of the location of the Bank Grading Units, Mat Sinking Unit and the M/V Harrison and M/V William James effective period for the safety zone and of any changes in the effective period for the safety zone. This rule is effective from August 2, 2012 through 8 a.m. November 1, 2012, local time. If emergency dredging is completed earlier, enforcement of the safety zone will be curtailed.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

This regulation is not a significant regulatory action because it will only be in effect for limited periods of time and will not substantially obstruct maritime traffic. Notifications to the marine community will be made through broadcast notice to mariners and electronic mail. Notices of changes to the safety zone and effective times will also be made. Deviation from the restrictions may be requested from the COTP or designated representative and will be considered on a case-by-case basis. The impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Mississippi River, effective from August 2, 2012 through November 1, 2012, local time. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule allows for the passing of vessels. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels. Notifications to the marine community will be made through broadcast notice to mariners and electronic mail. Notices of changes to the safety zone and effective times will also be made. Deviation from the restrictions may be requested from the COTP or designated representative and will be considered on a case-by-case basis.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the **ADDRESSES** section.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0738 to read as follows:

§ 165.T08–0738 Fixed and Moving Safety Zone; Around the USACE Bank Grading Units, Mat Sinking Units and the M/V Harrison and M/V William James.

(a) *Location.* The following area is a fixed and moving safety zone: All waters of the Mississippi River within 100 yards of the Bank Grading Units, Mat Sinking Unit and the M/V Harrison and M/V William James.

(b) *Effective dates.* This section is effective from 6 a.m. July 31, 2012 through 8 a.m. November 1, 2012, local time.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the COTP Lower Mississippi River, COTP Ohio Valley or a designated representative.

(2) Vessels shall not enter the moving safety zone.

(3) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP Lower Mississippi River, COTP Ohio Valley or a designated representative. They may be contacted on VHF–FM channels 16 or The COTP Lower Mississippi River may be contacted by telephone at 866–777–2784. The COTP Ohio Valley may be contacted at 1–800–253–7465.

(4) All persons and vessels shall comply with the instructions of the COTP Lower Mississippi River, COTP Ohio Valley and designated personnel. Designated personnel include commissioned, warrant, petty officers of the U.S. Coast Guard and Government employees of the US Army Corps of Engineers.

(5) Minimum speed will be required of all vessels transiting within 50 yards of the moving safety zone. Vessels receiving Captain of the Port authority to enter the safety zone must also transit at a minimum safe speed and in accordance with the direction of the Captain of the Port authorizing transit.

(6) No vessel shall anchor, stop, remain or drift without power at anytime in the moving safety zone.

(d) *Informational broadcasts.* The Captain of the Port, Lower Mississippi River or a designated representative will inform the public through broadcast notices to mariners (BNM) of the effective period for the safety zone and of any changes in the effective period or size of the safety zone.

Dated: August 2, 2012.

W. M. Drelling,

Captain, U.S. Coast Guard, Captain of the Port Lower Mississippi.

L. W. Hewett,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2012–25543 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0904]

RIN 1625–AA00

Safety Zone; Bridge Demolition Project; Indiana Harbor Canal, East Chicago, IN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Indiana Harbor Canal in East Chicago, Indiana. This safety zone is intended to restrict vessels from a portion of the Indiana Harbor Canal due to the Demolition Project on the Cline Avenue Bridge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the demolition project.

DATES: This rule will be effective between October 27 and November 10, 2012. This rule will be enforced from 6:00 to 8:00 a.m. on October 27 and November 10, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0904 and are available online by going to *www.regulations.gov,* inserting USCG–2012–0904 in the ''Search'' box, and then clicking ''search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

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

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

B. Basis and Purpose

On October 27 and November 10, 2012, Walsh Construction Company will be conducting demolition on portions of the Cline Avenue bridge in East Chicago, IN. The Captain of the Port, Sector Lake Michigan, has determined that this demolition project will pose a significant risk to public safety and property. Such hazards include loss of life and property in the proximity of explosives, and collisions among vessels and contractors involved in the demolition project.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port, Sector

Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of persons and vessels during the demolition project on the Cline Ave bridge. This zone will be enforced between 6:00 a.m. and 8:00 a.m. on October 27 and November 10, 2012.

The safety zone will encompass all waters of the Indiana Harbor Canal in the vicinity of the Cline Avenue Bridge.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be small and enforced for only two hours on each day it is in effect. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Indiana Harbor Canal on October 27 and November 10, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only 2 hours on 2 days. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order

13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0904 to read as follows:

§ 165.T09–0904 Safety Zone; Bridge Demolition Project, Indiana Harbor Canal, East Chicago, Indiana.

(a) *Location.* The safety zone will encompass all waters of the Indiana Harbor Canal in the vicinity of the Cline Avenue Bridge.

(b) *Effective and enforcement period.* This zone will be effective and enforced between 6:00 a.m. and 8:00 a.m. on October 27 and November 10, 2012.

(c) *Regulations.*

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

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

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

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

Dated: September 27, 2012.

M. W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–25552 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0931]

RIN 1625–AA00

Security Zone; James River, Kingsmill Resort, Williamsburg, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary security zone on the James River in the vicinity of Kingsmill Resort Marina, Williamsburg, VA during a visit by The President of the United States. This security zone will prohibit unauthorized vessels and people from entering or remaining in the security zone without permission from the Captain of the Port or designated representative. This security zone is necessary to provide security for The President of the United States.

DATES: This rule is effective October 12, 2012 to October 17, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0931. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest. The Coast Guard received information about the event on October 3, 2012. Since immediate action is needed to protect The President of the United States and accompanying high-ranking government officials from potential waterborne threats; the Coast Guard was

unable to provide prior notice and opportunity to comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to protect The President of the United States and accompanying high-ranking government officials, and the public from possible waterborne security threats. Any delay in the effective date of this rule is contrary to public and national interests.

B. Basis and Purpose

On October 13, 2012, The President of the United States will visit Kingsmill Resort in Williamsburg, VA. The United States Secret Service has requested the Coast Guard provide waterborne point protection during the visit.

This temporary security zone is necessary to provide for the security of The President of the United States and accompanying high-ranking government officials, and protect against sabotage or terrorist attacks to human life, vessels, mariners and waterfront facilities at or near this event.

C. Discussion of the Final Rule

The U.S. Coast Guard is establishing a temporary security zone on the navigable waters of the James River in the vicinity Kingsmill Resort Marina, Williamsburg, VA. This security zone will encompass all navigable waters on the James River within a 1000 yard radius of approximate position 37°13′23″ N/76°40′03″ W (NAD 1983) in the vicinity of Kingsmill Resort Marina, in Williamsburg, VA.

Access to the security zone will be restricted during the specified date and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area. This temporary security zone will be effective and enforced from 11:59 p.m. on October 12, 2012 to 12:01 p.m. on October 17, 2012.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 or Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation restricts access to the security zone, the effect of this rule will not be significant because: (i) The security zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) vessels can safely transit around the zone and are not precluded from using any portion of the waterway except the security zone itself; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. However, this rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in the described portion of the security zone during the enforcement periods from 11:59 p.m. on October 12, 2012 to 12:01 p.m. on October 17, 2012. The temporary security zone will not have a significant impact on a substantial number of small entities because the zone will only be in place for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary security zone. Under figure 2–1, paragraph (34)(g) of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule because it concerns an emergency situation of less than 1 week in duration.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0931 to read as follows:

§ 165.T05–0931 Security Zone; James River, Kingsmill Resort, Williamsburg, VA.

(a) *Regulated area.* The following area is a security zone: All navigable waters of the James River within a 1000 yard radius of approximate position 37°13′23″ N/76°40′03″ W (NAD 1983) in the vicinity of Kingsmill Resort Marina, in Williamsburg, VA.

(b) *Definition.* For purposes of enforcement of this section, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this security zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia, or the Captain of the Port Representative.

(2) The operator of any vessel granted permission to enter this security zone must:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign; and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 638–6637.

(4) U.S. Coast Guard vessels enforcing the security zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period.* This section will be enforced from 11:59 p.m. on October 12, 2012 to 12:01 p.m. on October 17, 2012.

Dated: October 5, 2012.

John K. Little,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–25535 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0388; FRL–9738–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting full approval of revisions to the West Virginia State Implementation Plan (SIP), submitted by the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) on August 31, 2011, with the exception of the narrow issue of the requirement to include condensable emissions of particulate matter (condensables) in the definition of ''regulated NSR pollutant'' in the State's Prevention of Significant Deterioration (PSD) program. These revisions pertaining to West Virginia's PSD program incorporate preconstruction permitting regulations for fine particulate matter ($PM_{2.5}$) and Greenhouse Gases (GHGs) into the West Virginia SIP. In light of a comment received on the July 31, 2012 proposed rule, EPA is reviewing West Virginia State Rule 45CSR14 to determine the extent to which its definition of ''regulated NSR pollutant'' satisfies the corresponding Federal definition, and will address this issue in a separate action. In addition, EPA is granting full approval of the PSD portions of other related infrastructure submissions required by the Clean Air Act (CAA) which are necessary to implement, maintain, and enforce the 1997 $PM_{2.5}$ and ozone National Ambient Air Quality Standards (NAAQS), the 2006 $PM_{2.5}$ NAAQS, and the 2008 lead and ozone NAAQS, with the exception of the narrow issue of the requirement to include condensables in the definition of ''regulated NSR pollutant.'' EPA will address this issue in a separate action. EPA is granting approval of these revisions in accordance with the requirements of the CAA.

DATES: This final rule is effective on November 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0388. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Michael Gordon, (215) 814–2039, or by email at *gordon.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 2012 (77 FR 45302), EPA proposed approval of amendments to the PSD permitting regulations under West Virginia State Rule 45CSR14, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration, submitted by the WVDEP as a SIP revision on August 31, 2011. The August 31, 2011 SIP revision submitted by West Virginia generally pertains to two Federal rulemaking actions. The first is the ''Implementation of the New Source Review (NSR) Program for Particulate Matter less than 2.5 Micrometers ($PM_{2.5}$)'' (NSR $PM_{2.5}$ Rule), which was promulgated on May 16, 2008 (73 FR 28321). The second is the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (Tailoring Rule), which was promulgated on June 3, 2010 (75 FR 31514). In addition to the August 31, 2011 SIP submission, EPA also proposed to approve those portions of previous SIP submissions from WVDEP which address the PSD-related requirements set forth in CAA section 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$ NAAQS, 1997 8-hour ozone NAAQS, 2006 $PM_{2.5}$ NAAQS, 2008 lead NAAQS, and 2008 ozone NAAQS, as well as CAA section 110(a)(2)(C) and (J) for the 2008 lead NAAQS and 2008 ozone NAAQS. These previous SIP submissions, submitted by West Virginia to satisfy the PSD-related provisions found in CAA section 110(a)(2) are referred to as infrastructure SIP submissions. All of these State submittals, as well as technical support documents (TSDs) in support of the proposed and final actions are included in the docket. The July 31, 2012 notice of proposed rulemaking (NPR) and its supporting TSD contain detailed discussions of the West Virginia SIP submissions, their relationship to the CAA and the Federal regulatory PSD SIP requirements of 40 CFR part 51.166 applicable as of the time of the August 31, 2011 submittal, as well as the PSD-related infrastructure requirements in CAA section 110(a)(2), and EPA's rationale for its proposed action; therefore, those discussions will not be restated here. A summary of the comments received and EPA's responses are provided in Section II of this document.

II. Public Comments and EPA's Responses

EPA received comments on the July 31, 2012 proposal to approve West Virginia's revisions to its SIP's PSD permitting requirements and to approve portions of infrastructure submissions relating to West Virginia's PSD permit program. The portions of the infrastructure submittals at issue relate to the PSD requirements of CAA sections 110(a)(2)(C), (D)(i)(II) and (J) for the 2008 lead NAAQS and the 2008 ozone NAAQS, and CAA sections 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$ NAAQS, 1997 ozone NAAQS, and the 2006 $PM_{2.5}$ NAAQS. A summary of those comments and EPA's responses are as follows:

Comment: A commenter raises issues regarding the current economy in the State of West Virginia and contends that Federal air pollution requirements imposed since the 1970s have resulted in the economic decline in the Northern Panhandle.

Response: EPA thanks the commenter for the submittal. For purposes of background, EPA is acting on SIP submissions that reflect State law in effect at the time of the submittals. The commenter has not raised any specific issue relating to the proposed approval of West Virginia's SIP submittals at issue in this rulemaking process. Nor has the commenter given any indication of what action they would prefer EPA to take on West Virginia's SIP submittals. Therefore, EPA views this comment as being not relevant to EPA's proposed action and EPA does not have any obligation to respond to this general and unrelated comment. *See Sherley* v. *Sebellius,* 776 F. Supp. 2d 1, 53–54 (D.D.C. 2011) (stating Federal agency must only respond to significant comments relevant to an agency's decision); *Conference of State Bank Supervisors* v. *Office of Thrift Supervision,* 792 F. Supp. 837, 846 (D.D.C. 1992) (finding agencies need only respond to significant comments under the Administrative Procedure Act).

Comment: EPA cannot approve the infrastructure SIPs because the significant emissions rates in the SIP and other de minimis exceptions are arbitrary and capricious with regard to the 2008 ozone and lead NAAQS.

EPA's *Response:* EPA disagrees with the commenter that we cannot approve the infrastructure SIPs because the significant emissions rates and other de minimis exceptions are arbitrary and capricious. The purpose of this rulemaking is to take action on West Virginia's SIP revision submittals based upon their consistency with Federal regulations. The significant emissions applicability levels of 0.6 tons per year (TPY) for lead and 40 tons TPY for VOCs and for NO_X required by West Virginia's PSD permitting regulations mirror the Federal requirements found at 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i). West Virginia's proposed SIP revision satisfies the obligation that its SIP's PSD regulation meet 40 CFR 51.166(b)(23)(i). In fact, West Virginia's regulatory language mirrors the Federal counterpart language. Therefore, EPA has no basis to disapprove West Virginia's regulatory language and require West Virginia to meet an alternative standard which EPA has not established through the required administrative rulemaking process. West Virginia is not required to revise the significant emissions rates in question unless and until EPA revises the Federal requirements at 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i). For these reasons, EPA disagrees with the commenter's assertion that the significant emissions applicability thresholds in the West Virginia SIP's PSD regulation are arbitrary and capricious with regard to the 2008 ozone and lead NAAQS.

Comment: One commenter objects to the EPA's proposed approval of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ and the 1997 and 2008 8-hour ozone and the 2008 lead NAAQS on the grounds that ''EPA has promulgated increments for $PM_{2.5}$. *See* 75 FR 64,864 (Oct. 20, 2010).

However, the proposed West Virginia SIP does not include these increments even though the increments became applicable on October 12, 2011 * * *. Therefore EPA cannot approve the West Virginia Infrastructure SIP regarding the PSD elements for $PM_{2.5}$.'' [1] The commenter argues that ''(s)tates are required to include these increments in their SIPs before EPA can fully-approve an infrastructure submission.'' However, the commenter also acknowledges that the States had until July 20, 2012 to amend their SIPs to address the $PM_{2.5}$ increments required by the requirements of the 2010 $PM_{2.5}$ NSR/PSD Rule. With respect to this July 20, 2012 deadline, the commenter asserts that because the proposed rule at issue was published in the **Federal Register** on July 31, 2012, the proposed rule was published after the deadline by which States were required to submit SIP revisions in compliance with the 2010 $PM_{2.5}$ NSR/PSD Rule. Therefore, as of the date that the proposed rule was published in the **Federal Register** (July 31, 2012), the $PM_{2.5}$ increments were required to be included in West Virginia's SIP in order for West Virginia to meet the PSD requirements of sections 110(a)(2)(C), (D)(i)(II) and (J) of the CAA.

In addition to the above assertions, the commenter sets forth three reasons why EPA should not approve the specific CAA 110(a)(2) SIPs without first ensuring that West Virginia's SIP includes the $PM_{2.5}$ increments set forth at 40 CFR § 51.166(c): (1) EPA should not allow proposed major sources in West Virginia ''to avoid PSD requirements like $PM_{2.5}$ increments, while proposed major sources in other states * * * have to comply with this requirement''; (2) because EPA has proposed approval of the PSD requirements of CAA 110(a)(2) for the 2008 ozone and lead NAAQS, EPA will not have another opportunity to ''revisit this issue of lack of $PM_{2.5}$ increments''; and (3) because emissions of $PM_{2.5}$ and its precursors have negative effects on public health and welfare, EPA's full approval of West Virginia's infrastructure SIPs ''would cause innocent people to be killed by illegal $PM_{2.5}$ emissions.'' The commenter concludes by stating that: ''EPA must disapprove the PSD elements of the Infrastructure SIPs for failure to include the $PM_{2.5}$ increments. In the alternative, EPA could grant a conditional approval if West Virginia agrees to adopt the $PM_{2.5}$ increments into its SIP within one year.''

Response: EPA disagrees with the commenter that we cannot approve this SIP submission without inclusion of increments. The commenter asserts that the EPA should now disapprove the West Virginia infrastructure SIP because, since the date of EPA's proposal, the deadline for the submission of a SIP revision addressing the $PM_{2.5}$ increments has passed. However, pursuant to the 2010 $PM_{2.5}$ NSR/PSD Rule and CAA section 166(b), States were not required to submit a revised SIP addressing the $PM_{2.5}$ increments until July 20, 2012. EPA proposed action on the West Virginia infrastructure SIP in a notice signed on July 18, 2012.[2] Therefore, on the date that the proposed rule was signed by the Regional Administrator, the $PM_{2.5}$ increments were not required to be included in the West Virginia SIP in order for West Virginia to meet the PSD requirements of CAA sections 110(a)(2)(C), (D)(i)(II) and (J) of the Act.[3]

The commenter's concerns relate to the timing of EPA action on collateral, yet related, SIP submissions. These concerns highlight an important overarching question that the EPA has to confront when assessing the various infrastructure SIP submittals addressed in the proposed rule: how to proceed when the timing and sequencing of multiple related SIP submissions impact the ability of the State and the EPA to address certain substantive issues in the infrastructure SIP submission in a reasonable fashion.

It is appropriate for the EPA to take into consideration the timing and sequence of related SIP submissions as part of determining what it is reasonable to expect a State to have addressed in an infrastructure SIP submission for a NAAQS at the time when the EPA acts on such submission. The EPA has historically interpreted section 110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J) to require the EPA to assess a State's infrastructure SIP submission with respect to the then-applicable and Federally enforceable PSD regulations required to be included in a State's SIP at the time EPA takes action on the SIP. However, the EPA does not consider it reasonable to interpret section 110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J) to require the EPA to propose to disapprove a State's infrastructure SIP submissions because the State had not yet, at the time of proposal, made a submission that was not yet due for the 2010 $PM_{2.5}$ NSR/PSD Rule. To adopt a different approach by which the EPA could not act on an infrastructure SIP, or at least could not approve an infrastructure SIP, whenever there was any impending revision to the SIP required by another collateral rulemaking action would result in regulatory gridlock and make it impracticable or impossible for EPA to act on infrastructure SIPs if EPA is in the process of revising collateral PSD regulations. The EPA believes that such an outcome would be an unreasonable reading of the statutory process for the infrastructure SIPs contemplated in section 110(a)(1) and (2).

The EPA acknowledges that it is important that these additional PSD program revisions be evaluated and approved into the State's SIP in accordance with the CAA. In fact, West Virginia made the submission required by the 2010 $PM_{2.5}$ NSR/PSD Rule on June 12, 2010, and the EPA therefore intends to address the $PM_{2.5}$ increments in a subsequent rulemaking. EPA also acknowledges the commenter's concern about the potential for sources not being evaluated with respect to increments during the interim period while new PSD program revisions are being evaluated. However, EPA notes that it is implicit in the SIP processing procedures under CAA section 110(k) and the timing of notice and comment rulemaking that there will often be interim periods during which a State has adopted and submitted a new State law requirement in order to meet a CAA requirement, but the EPA will not yet have acted upon it to make it a Federally enforceable part of the State's SIP.

Moreover, major sources in West Virginia are subject to the $PM_{2.5}$ increments pursuant to the version of the regulation, 45CSR14, currently in effect in West Virginia. Because the regulations relating to $PM_{2.5}$ increments are currently effective and enforceable

[1] The commenter is referring to a separate rulemaking action by EPA: ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),'' 75 FR 64864 (Oct. 20, 2010). This collateral rulemaking concerned various issues relevant to $PM_{2.5}$ and PSD, including increments, significant impact levels, and a significant monitoring concentration. This rule will be referred to herein as the ''2010 $PM_{2.5}$ NSR/PSD Rule.''

[2] Although the notice was published by the **Federal Register** on July 31, 2012, the notice was signed by the Regional Administrator on July 18, 2012, before the statutory deadline for submission of the SIP revision addressing the $PM_{2.5}$ increments.

[3] The commenter cites to a rulemaking in Region 5 wherein EPA proposed to narrowly disapprove a Michigan SIP to the extent that it failed to address the requirement to account for $PM_{2.5}$ precursors in the State's PSD program. That rulemaking, however, addressed requirements from the 2008 $PM_{2.5}$ NSR Implementation Rule for which the deadline for States to revise their SIPs had passed more than a year prior at the time of proposal. *See* 77 Fed. Reg. 45,992 (Aug. 2, 2012). In this case, the deadline for West Virginia to revise its SIP to address $PM_{2.5}$ increments had not passed at the time of proposal.

as a matter of State law, as of June 1, 2012, the EPA in the interim believes that proposed major sources in West Virginia are being required as a matter of State law to comply with the PSD requirements like $PM_{2.5}$ increments and thus that these sources are not being treated differently under State law than similar sources in other States that have approved SIP revisions that include the increments. The only distinction between West Virginia and the other States identified by the commenter is that those other States submitted their SIP revisions addressing the $PM_{2.5}$ increments far enough in advance of EPA's action on the States' infrastructure SIPs to begin the administrative rulemaking process for such SIP revisions. Thus, the EPA does not believe that approving the State's infrastructure SIP submissions at this time will lead to major sources in West Virginia being treated differently than similar sources in the other States as a factual matter. If the commenter determines that sources are not being evaluated in accordance with applicable State law requirements during the interim before EPA acts on a later SIP submission, those concerns can be addressed in the State's permitting process.

The EPA shares the commenter's concerns that emissions of $PM_{2.5}$ and its precursors have negative effects on public health and welfare. However, EPA has no basis on which to find that EPA's approval of West Virginia's infrastructure SIPs ''would cause innocent people to be killed by illegal $PM_{2.5}$ emissions.'' As explained above, the State is addressing $PM_{2.5}$ increments in the version of 45CSR14 currently adopted pursuant to State regulatory requirements. West Virginia made the SIP submission required by the 2010 $PM_{2.5}$ NSR/PSD Rule to reflect that its PSD permitting program now includes $PM_{2.5}$ increments as required by the 2010 $PM_{2.5}$ NSR/PSD Rule. EPA will be acting on that submission in a separate rulemaking action in accordance with section 110(k). Until such time as EPA evaluates West Virginia's submission and takes the necessary rulemaking actions, EPA notes the fact that the revisions have been made and are currently enforceable for purposes of State law.

Finally, EPA has considered the suggestion that, rather than approving the State's infrastructure SIPs, the EPA ''could grant a conditional approval'' of the infrastructure SIPs if West Virginia agrees to adopt the $PM_{2.5}$ increments as required by the 2010 $PM_{2.5}$ NSR/PSD Rule into its SIP within one year.

The EPA interprets the commenter's suggestion that EPA grant ''conditional approval'' of the State's infrastructure SIP submissions to be a reference to the concept of conditional approval under section 110(k)(4). The EPA considered the commenter's suggestion as a means of addressing the SIP submission timing issue, but EPA is constrained by the provisions of the statute. Section 110(k)(4), under the rubric of ''conditional approval,'' explicitly authorizes EPA to approve a SIP submission ''based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision.'' Courts have confirmed that conditional approvals are an available course of action under section 110(k), but only if the statutory conditions for such conditional approvals can be met.

Based on the specific language of section 110(k)(4), EPA concludes that it would not be appropriate to use the mechanism of a conditional approval in this action on the West Virginia PSD-related infrastructure SIP submissions. The statute clearly contemplates use of this approach when a State has made a commitment to make a submission in the future that meets the statutory criteria. In this instance, however, on June 12, 2012, West Virginia submitted the SIP revision required by the 2010 $PM_{2.5}$ NSR/PSD Rule. Therefore, the EPA does not believe that it is appropriate to use the mechanism of a conditional approval in these circumstances.

Comment: EPA cannot approve the infrastructure SIPs because West Virginia's SIP does not clearly regulate condensable direct $PM_{2.5}$.

Response: The 2008 NSR $PM_{2.5}$ Rule changed the Federal definition of ''regulated NSR pollutant,'' found at 40 CFR 51.166(b)(49)(vi) to require that States account for condensable emissions of particulate matter (condensables) in issuing NSR permits. In light of this comment, EPA is reviewing West Virginia State Rule 45CSR14 to determine the extent to which its definition of ''regulated NSR pollutant'' satisfies the requirements of section 51.166(b)(49)(vi) insofar as it applies to particulate matter. For this reason, EPA is deferring taking action on the definition of ''regulated NSR pollutant'' in section 2.66 of West Virginia State Rule 45CSR14 with regard to the requirement to account for condensables. EPA will address this issue in a separate rulemaking action.

III. Final Actions

EPA is fully approving WVDEP's August 31, 2011 submittal, except for the narrow issue of the requirement to include condensable emissions of particulate matter in the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66. Except for this narrow issue, EPA is approving all other portions of the submittal, including but not limited to, the remainder of section 2.66. In approving West Virginia State Rule 45CSR14 with regard to all other CAA and Federal regulatory SIP requirements for PSD applicable as of the August 31, 2011 SIP revision submission date, EPA is acknowledging that it meets the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (Tailoring Rule), which was promulgated on June 3, 2010 (75 FR 31514). EPA is also approving those portions of West Virginia's SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 which address the PSD-related requirements set forth in CAA section 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$ NAAQS, 1997 8-hour ozone NAAQS, 2006 $PM_{2.5}$ NAAQS, 2008 lead NAAQS, and 2008 ozone NAAQS, as well as CAA section 110(a)(2)(C) and (J) for the 2008 lead NAAQS and 2008 ozone NAAQS, except for the narrow issue of the requirement to include condensable emissions of particulate matter in the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66.

EPA is not finalizing its proposed approval of WVDEP's August 31, 2011 submittal with respect to the narrow issue of the requirement to include condensable emissions of particulate matter in the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66. Additionally, EPA is not finalizing its proposed approval of WVDEP's SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 submitted to meet the PSD-related infrastructure SIP obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) with respect to the narrow issue of the requirement to include condensable emissions of particulate matter in the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66. EPA will address these issues in a separate action.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [*Insert date 60 days from date of publication of this document in the* ***Federal Register****]*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action on the West Virginia SIP PSD provisions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 27, 2012.

W. C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520,

■ a. The table in paragraph (c) is amended by revising the entries for [45 CSR] Series 14 regarding Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.

■ b. The table in paragraph (e) is amended by:

i. Revising the entries regarding the Section 110(a)(2) PSD-related Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 2008 Lead NAAQS, and the 2008 ozone NAAQS.

ii. Adding at the end of the table an entry regarding the Section 110(a)(2) PSD-related Infrastructure Requirements 110(a)(2)(C), (D)(i)(II), and (J) for the 2008 8-Hour Ozone NAAQS.

The revisions and addition read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
*	*	*	*	* * *
[45CSR] Series 14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration				

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–14–1	General	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–2	Definitions	6/16/11	10/17/12 *[Insert page number where the document begins].*	1. Inclusion of $PM_{2.5}$ significant emissions rates and precursors and GHG provisions. 2. Taking no action on the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66. only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
Section 45–14–3	Applicability	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–4	Ambient Air Quality Increments and Ceilings.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–5	Area Classification	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–6	Prohibition of Dispersion Enhancement Techniques.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–7	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–8	Requirements Relating to Control Technology.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–9	Requirements Relating to the Source's Impact on Air Quality.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–10	Modeling Requirements	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–11	Air Quality Monitoring Requirements.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–12	Additional Impacts Analysis Requirements.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–13	Additional Requirements and Variances for Source Impacting Federal Class 1 Areas.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–14	Procedures for Sources Employing Innovative Control Technology.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–15	Exclusions From Increment Consumption.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–16	Specific Exemptions	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–17	Public Review Procedures.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–18	Public Meetings	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–19	Permit Transfer, Cancellation and Responsibility.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–20	Disposition of Permits	6/16/11	10/17/12 *[Insert page number where the document begins].*	

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–14–21	Conflict with Other Permitting Rules.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–25	Actual PALs	6/16/11	10/17/12 *[Insert page number where the document begins].*	
Section 45–14–26	Inconsistency Between Rules.	6/16/11	10/17/12 *[Insert page number where the document begins].*	
*	*	*	*	* * *

* * * * * (e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	12/3/07, 5/21/08	8/4/11, 76 FR, 47062	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		12/3/07, 12/11/07, 8/31/11	10/17/12 *[Insert page number where the document begins].*	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	4/3/08, 5/21/08, 7/9/08, 3/18/10	8/4/11, 76 FR, 47062	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		12/11/07, 4/3/08, 8/31/11	10/17/12 *[Insert page number where the document begins].*	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	Statewide	10/1/09, 3/18/10	8/4/11, 76 FR, 47062	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		10/1/09, 8/31/11	10/17/12 *[Insert page number where the document begins].*	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	Statewide	10/26/11	9/10/12, 77 FR, 55417	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
		8/31/11, 10/26/11	10/17/12 *[Insert page number where the document begins].*	Approval of the following elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	Statewide	8/31/11, 2/17/12	10/17/12 *[Insert page number where the document begins].*	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J), except taking no action on the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).

■ 3. In § 52.2522, paragraph (i) is added to read as follows.

§ 52.2522 Approval status.

* * * * *

(i)(1) EPA is fully approving WVDEP's August 31, 2011 submittal, except for the narrow issue of the requirement to include condensable emissions of particulate matter in the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66. Except for this narrow issue, EPA is approving all other portions of the submittal, including but not limited to, the remainder of section 2.66. In approving West Virginia State Rule 45CSR14 with regard to all other CAA and Federal regulatory SIP requirements for PSD applicable as of the August 31, 2011 SIP revision submission date, EPA is acknowledging that it is consistent with the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (Tailoring Rule), which was promulgated on June 3, 2010 (75 FR 31514). EPA is not finalizing its proposed approval of WVDEP's August 31, 2011 submittal with respect to the narrow issue of the requirement to include condensable emissions of particulate matter in the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66. In light of a comment received on its July 31, 2012 proposed rule (77 FR 45302), EPA is reviewing West Virginia State Rule 45CSR14 to determine the extent to which its definition of ''regulated NSR pollutant'' satisfies the corresponding Federal definition, and will address this issue in a separate action.

(2) EPA is also approving those portions of West Virginia's SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 which address the PSD-related requirements set forth in CAA section 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$ NAAQS, 1997 8-hour ozone NAAQS, 2006 $PM_{2.5}$ NAAQS, 2008 lead NAAQS, and 2008 ozone NAAQS, as well as CAA Section 110(a)(2)(C) and (J) for the 2008 lead NAAQS and 2008 ozone NAAQS, except for the narrow issue of the requirement to include condensable emissions of particulate matter in the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66. EPA is not finalizing its July 31, 2012 proposed approval (77 FR 45302) of WVDEP's SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 submitted to meet the PSD-related infrastructure SIP obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) with respect to the narrow issue of the requirement to include condensable emissions of particulate matter in the definition of ''regulated NSR pollutant'' found at 45CSR14 section 2.66. EPA will address this issue in a separate action.

[FR Doc. 2012–25386 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0754; FRL–9740–7]

Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories for the SMAQMD. We are approving these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 17, 2012 without further notice, unless EPA receives adverse comments by November 16, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0754, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: 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 *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 *www.regulations.gov* or email *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 email directly to EPA, your email 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: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available 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: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@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 negative declarations did the State submit?

Table 1 lists the negative declarations we are approving with the dates that they were adopted by the SMAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
SMAQMD	Fiberglass Boat Manufacturing Materials (EPA–453/R–08–004, September 2008)	03/22/12	07/12/12
SMAQMD	Automobile and Light-Duty Truck Assembly Coatings (EPA–453/R–08–006, September 2008).	03/22/12	07/12/12

On August 16, 2012, EPA determined that the SMAQMD Negative Declarations submitted on July 12, 2012, met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these negative declarations?

There are no previous versions of these negative declarations.

C. What is the purpose of the submitted negative declarations?

The negative declarations were submitted to meet the requirements of CAA section 182(b)(2). Ozone nonattainment areas classified at moderate and above are required to adopt VOC regulations for the published Control Techniques Guidelines (CTG) categories and for major non-CTG sources of VOC or NO_X. If a nonattainment area does not have stationary sources covered by an EPA published CTG, then the area is required to submit a negative declaration. The negative declarations were submitted because there are no applicable sources within the SMAQMD jurisdiction. EPA's technical support document (TSD) has more information about these negative declarations.

II. EPA's Evaluation and Action

A. How is EPA evaluating the negative declarations?

The negative declarations are submitted as SIP revisions and must be consistent with CAA requirements for Reasonably Available Control Technology (RACT) (see section 182(b)(2)) and SIP relaxation (see sections 110(1) and 193.) To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist or are planned for the SMAQMD.

B. Do the negative declarations meet the evaluation criteria?

We believe these negative declarations are consistent with the relevant policy and guidance regarding RACT and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted negative declarations as additional information to the SIP because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of these negative declarations. If we receive adverse comments by November 16, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 17, 2012.

III. Administrative Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249,

November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 27, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal

Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.222 is amended by adding paragraph (a)(2)(iii) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(2) * * *

(iii) Fiberglass and Boat Manufacturing Materials and Automobile and Light-Duty Truck Assembly Coatings were submitted on July 12, 2012 and adopted on March 22, 2012.

* * * * *

[FR Doc. 2012–25383 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0759; FRL–9364–9]

Buprofezin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide buprofezin in or on multiple commodities which are identified and discussed later in this document. In addition, this regulation removes established tolerances for certain commodities/groups superseded by this action, and corrects the spelling of some commodities. The Interregional Research Project #4 (IR–4) and Nichino America Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 17, 2012. Objections and requests for hearings must be received on or before December 17, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0759, is available at *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; email address: *johnson.amaris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those

objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0759 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 17, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0759, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of November 9, 2011 (76 FR 69690) (FRL–9325–1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petition (PP) 1E7908 by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, and PP 1F7905 by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE. The petitions requested that 40 CFR 180.511 be amended by establishing tolerances for residues of the insecticide buprofezin (2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one) in or on bean, succulent at 0.02 parts per million (ppm); Brassica, leafy greens, subgroup 5B at 55 ppm; turnip, greens at 55 ppm; vegetable, fruiting, group 8–10 at 3.0 ppm; fruit, citrus, group 10–10 at 2.5 ppm; fruit, pome, group 11–10 at 4.0 ppm; persimmon at 1.9 ppm; and tea at 20 ppm (PP 1E7908) and PP 1F7905 requested tolerances for residues in or on nut, tree, group 14 at 0.05 ppm and pistachios at 0.05 ppm. PP 1E7908 also requested removal of tolerances for non-bell pepper; fruiting vegetable group 8, except non-bell pepper; fruit, citrus, group 10; and fruit, pome, group 11 which will be covered by the newly requested tolerances. That notice referenced a summary of the petition prepared by Nichino America, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* Two general comments were received on the notice of filings. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels for several commodities. Due to insufficient data, EPA is not establishing the citrus group 10–10 tolerance. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for buprofezin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with buprofezin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Buprofezin has low acute toxicity via the oral, dermal and inhalation routes of exposure. It is not an eye or skin irritant; nor is it a dermal sensitizer. In subchronic toxicity studies, the primary effects of concern in the rat were increased microscopic lesions in male and female liver and thyroid, increased liver weights in males and females, and increased thyroid weight in males. In chronic studies in the rat, an increased incidence of follicular cell hyperplasia and hypertrophy in the thyroid of males was reported. Increased relative liver weights were reported in female dogs. Buprofezin was not carcinogenic to male and female rats. In the mouse, increased absolute liver weights in males and females, along with an increased incidence of hepatocellular adenomas and hepatocellular adenomas plus carcinomas in females were reported. The increase in carcinomas was not statistically significant when analyzed separately. Based on the increased incidence of combined benign and malignant liver tumors in female mice only, no evidence of carcinogenicity in rats, and no evidence of genotoxicity in submitted guideline studies using *in vitro* and *in vivo* genotoxicity assays, EPA classified buprofezin as having no greater than suggestive evidence of carcinogenicity.

Developmental and reproductive toxicity studies do not indicate concern for increased susceptibility in offspring. Toxicity in the offspring was found at dose levels that were also toxic to the parent and the effects observed in the offspring were not more severe, qualitatively, than the effects observed in the parent. No neurotoxic effects were observed at any dose in a subchronic neurotoxicity study in rats at the highest dietary doses of 5,000 ppm. An immunotoxicity study did not demonstrate immunotoxic effects by buprofezin. A special study is required to generate specific data on the thyroid to protect the developing nervous

system from thyroid hormone disrupting chemicals.

Specific information on the studies received and the nature of the adverse effects caused by buprofezin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document ''Buprofezin Human Health Risk Assessment for Proposed Use of Buprofezin on Tree Nut Crop Group 14 including Pistachio, Brassica Leafy Greens Subgroup 5B, Turnip Greens, Tea and Persimmon & Expanded Uses on Fruiting Vegetables, Succulent Beans, Citrus Fruit, and Pome Fruit,'' pp. 40—42 in docket ID number EPA–HQ–OPP–2011–0759.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for buprofezin used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BUPROFEZIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	NOAEL = 200 mg/kg/day UF_A = 10 UF_H = 10 FQPA SF = 1x	Acute RfD = 2.0 mg/kg/day aPAD = 2.0 mg/kg/day	Developmental Toxicity Study-Rat. LOAEL = 800 mg/kg/day based on reduced ossification & decreased body weight in offspring.
Acute dietary (General population including infants and children).	No endpoint is available for this population because no effect attributable to a single day oral exposure was observed in animal studies.		
Chronic dietary (All populations).	NOAEL= 1.0 mg/kg/day UF_A = 3 UF_H = 10 FQPA SF = 10 UF_{DB}	Chronic RfD = 0.033 mg/kg/day cPAD = 0.0033 mg/kg/day	Two-year Chronic Toxicity/Carcinogenicity Study-Rat. LOAEL = 8.7 mg/kg/day based on increased incidence of follicular cell hyperplasia and hypertrophy in the thyroid of males.
Cancer (Oral, dermal, inhalation).	Suggestive Evidence of Carcinogenicity. The cRfD would be protective of potential carcinogenic effects from exposure to buprofezin.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to buprofezin, EPA considered exposure under the petitioned-for tolerances as well as all existing buprofezin tolerances in 40 CFR 180.511. EPA assessed dietary exposures from buprofezin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for buprofezin in the population subgroup females age 13–49. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance level residues for buprofezin and estimated residue levels of the BF4 Conjugate, a metabolite of concern, based on buprofezin metabolism data. The BF4 Conjugate is not detectable by data collection methods and thus is not included in the tolerance level. Given the potential for the buprofezin metabolites BF9 and BF12 to concentrate to a greater degree than buprofezin in processed commodities, Dietary Exposure Evaluation Model (DEEM) (Version 7.81) default processing factors were retained for all commodities, except for tomato paste and puree, which were reduced based on empirical data. Total residues of concern in meat and milk were based on feeding study data. EPA also assumed 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. A refined chronic dietary analysis was conducted using PCT estimates when available and 100 PCT for all other crops. Buprofezin residues in crop commodities were estimated based on average residue levels from field trial data, average residue levels from USDA Pesticide Data Program (PDP) data, or tolerance level residues. As with the acute exposure assessment,

EPA estimated residue levels of the metabolite BF4 Conjugate were based on metabolism data. Given the potential for the buprofezin metabolites BF9 and BF12 to concentrate to a greater degree than buprofezin in processed commodities, DEEM (Version 7.81) default processing factors were retained for all commodities, except for tomato paste and puree, which were reduced based on empirical data. Total residues of concern in meat and milk were based on feeding study data.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to buprofezin and the cRfD would be protective of cancer effects.

The cRfD was based on an endpoint of toxicity from a rat combined chronic/oncogenicity study. The NOAEL in this study was 1.0 mg/kg/day based on increased incidence of follicular cell hyperplasia and hypertrophy in the thyroid of males at 8.7 mg/kg/day. Buprofezin was not carcinogenic in rats. Administration of buprofezin in the diet was associated with increased incidence of liver tumors in female mice only at the mid- and high-doses but not at the low dose of 1.82 mg/kg/day which was considered to be the NOAEL for the females. Because the positive evidence of cancer was limited to one sex of one species (female mice), there was no evidence of mutagenicity, and no carcinogenic effects in rats, EPA concluded that the weight-of-the-evidence indicated that the carcinogenic findings in female mice are a threshold effect. The NOAEL of 1 mg/kg/day from the rat study on which the cRfD is based on is lower than the NOAEL for liver tumors of 1.82 mg/kg/day from the mouse. Therefore, the cRfD would be protective of potential carcinogenic effects from exposure to buprofezin.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Almond 1%; Cantaloupes 5%; Cotton 1%; Grapefruit 1%; Honeydew 2.5%: Lemons 2.5%; Lettuce (head and leaf) 1%; Oranges 2.5%; Pears 15%; Pistachio 5%; Pumpkins 1%; Squash (summer) 1%; Tomatoes 2.5%; Watermelons 2.5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

Buprofezin has only been registered for use on some commodities since late 2009. Therefore, PCT estimates based on actual usage data were not deemed sufficient indicators of potential usage on these recently registered crops. In 2009 the EPA used PCT estimates for these commodities based on the market leader approach and has determined these are still appropriate estimates to be used in risk assessment. The Agency estimated the PCT for the uses registered in 2009 as follows:

Spinach 30%; Celery 18%; Broccoli 55%; Cabbage 40%, Celery 18%, Chinese Broccoli 55%; Brussel Sprouts 61%; Cauliflower 48%; Kohlrabi 5%; Apple 5%; Apricot 51%; Cherry 72%; Nectarine 51%; Peach 13%; Plum 37%; Grape 15%; Strawberry 39%;

For additional information regarding the PCT estimates for these commodities refer to the final rule published in the **Federal Register** of July 10, 2009 (74 FR 33153) (FRL–8421–3).

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which buprofezin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for buprofezin in drinking water. These simulation models take into account

data on the physical, chemical, and fate/transport characteristics of buprofezin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of buprofezin for acute exposures are estimated to be 58.2 parts per billion (ppb) for surface water and 0.09 ppb for ground water. The EDWCs for chronic exposures are estimated to be 18.6 ppb for surface water and 0.09 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 58.2 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 18.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Buprofezin is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found buprofezin to share a common mechanism of toxicity with any other substances, and buprofezin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that buprofezin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10x) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10x, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased quantitative or qualitative susceptibility following *in utero* (rats and rabbits) and pre-and post-natal exposure (rats) to buprofezin.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x for acute exposures. However, the 10x FQPA safety factor has been retained for chronic exposure. These decisions are based on the following findings:

i. The toxicity database for buprofezin is complete except for submission of the thyroid toxicity study that will inform the Agency's understanding of buprofezin's chronic effects. A chronic POD of 1.0 mg/kg/day (NOAEL) was selected for the general population from a 2-year chronic feeding study in rats based on increased incidence of follicular cell hyperplasia and hypertrophy in the thyroid in males at the LOAEL of 8.7 mg/kg/day. A UF 300× (10× for intraspecies variation; 3× for interspecies extrapolation—reduced from 10× based on demonstrated evidence that rats are more susceptible to thyroid effects than humans; 10× for protection of infants and children) was applied to the dose to obtain a cPAD. The 10× FQPA Safety Factor was retained due to uncertainty caused by the lack of a thyroid assay in young rats. In rat chronic, subchronic, and reproductive toxicity studies effects such as thyroid enlargement and follicular cell hyperplasia were seen in adult animals. However, hormone levels, thyroid organ weights, and histopathology were not evaluated for pups in any reproductive studies. To assess the potential toxic characteristics to thyroid structure or hormone homeostasis during development, the Agency is requiring a developmental thyroid study.

ii. There is no indication that buprofezin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that buprofezin results in increased susceptibility to *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment was performed based on 100 PCT and a conservative estimate of total residues of concern for buprofezin. The chronic dietary food exposure assessment was performed based, in part on, average field trial residues, average USDA PDP residues, and PCT were used where available. Nonetheless, the chronic exposure assessment is conservative and is likely to overestimate risks based on a number of factors including, use of 100 PCT assumptions for several crops for which data were unavailable, use of a conservative factor to account for the BF4 Conjugate, use of default processing factors, and use of drinking water exposure estimates for application of buprofezin to coffee, which is grown in limited areas of the U.S. (e.g., Puerto Rico, Hawaii). Likewise, EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to buprofezin in drinking water. These assessments will not underestimate the exposure and risks posed by buprofezin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to buprofezin will occupy 5% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to buprofezin from food and water will utilize 91% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for buprofezin.

3. *Short and intermediate-term risk.* Short and intermediate-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short and intermediate-term adverse effect was identified; however, buprofezin is not registered for any use patterns that would result in short-term residential exposure. Short and intermediate-term risk is assessed based on short and intermediate-term residential exposures plus chronic dietary exposure. Because there is no short and intermediate-term residential exposures and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short and intermediate-term risk), no further assessment of short and intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short and intermediate-term risk for buprofezin.

4. *Aggregate cancer risk for U.S. population.* The Agency considers the chronic aggregate risk assessment, making use of the cPAD, to be protective of any aggregate cancer risk. Based on the limited evidence of carcinogenicity (driven by benign liver tumors) of buprofezin to female mice only and not males or rats, and no mutagenicity, EPA concluded a threshold approach is appropriate for the risk assessment. Therefore, the chronic assessment is considered protective for the cancer risk estimate.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to buprofezin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate gas chromatography with nitrogen phosphorus detection (GC/NPD) and a GC/mass spectrometry (MS) method for confirmation of buprofezin residues in plant commodities is available to enforce the tolerance. These methods are available in the Pesticide Analytical Manual (PAM) Volumes I & II for enforcement of buprofezin tolerances.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The tolerance level being established by this action for tree nut group 14 is harmonized with the Codex MRL for almond. There is an established Codex MRL of 2.0 ppm in/on pepper and 1.0 ppm in/on tomato. The petitioner proposed a tolerance of 3.0 ppm for the Fruiting vegetable group 8–10, which contains both peppers and tomatoes. EPA cannot harmonize the U.S. tolerance on tomatoes with the tomato MRL because the residue field trial data submitted to support the fruiting vegetable group 8–10 tolerance reported residues higher than the 1.0 ppm level established by Codex for tomato. However, the residue field trial data was consistent with a tolerance of 2.0 ppm for the fruiting vegetable group 8–10, so EPA was able to harmonize with the Codex MRL for peppers. For pome fruit, the Codex MRLs and the U.S. tolerances are harmonized for ''fruit, pome (except pear and pear, Asian) at 3.0 ppm and pear and pear, Asian at 6.0 ppm. There are currently no established Codex MRLs for buprofezin in/on the remainder of the tolerances being established.

C. Response to Comments

EPA received two comments to the notice of filings PP 1E7908 and 1F7905, which said that toxic chemicals should not be allowed on food that Americans eat. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-for Tolerances

The tolerance for fruit, citrus, group 10–10 is not being established at this time due to a lack of residue chemistry data. Based on the data supporting the petition, EPA has revised the proposed tolerance on Brassica, leafy greens, subgroup 5B and turnip greens from 55 ppm to 60 ppm. The Agency revised these tolerance levels based on analysis of the residue field trial data using the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures.

Additionally, the Agency revised the proposed tolerance in or on vegetables, fruiting, group 8–10 from 3.0 to 2.0 to harmonize with the Codex MRL on pepper and will establish separate tolerances for fruit, pome, group 11–10 (except pear and pear, Asian) at 3.0 ppm and pear and pear, Asian oriental at 6.0 ppm to harmonize with Codex. A tolerance is not needed for pistachio since there is already a pistachio tolerance in § 180.511. Finally, the Agency is correcting language for established commodities that are spelled incorrectly—Llama should be Ilama and Loganberry should be Logan.

V. Conclusion

Therefore, tolerances are established for residues of buprofezin 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4*H* -1,3,5-thiadiazin-4-one, in or on bean, succulent at 0.02 ppm; Brassica, leafy greens, subgroup 5B at 60 ppm; fruit, pome, group 11–10 (except pear and pear, Asian) at 3.0 ppm; nut, tree, group 14 at 0.05 ppm; pear at 6.0 ppm; pear, Asian at 6.0 ppm; persimmon at 1.9 ppm; tea at 20 ppm; Turnip, greens at 60 ppm; vegetable, fruiting, group 8–10 at 2.0 ppm. Additionally, this regulation removes tolerances of buprofezin in or on almond at 0.05 ppm, fruit, pome group 11 at 4.0 ppm, okra at 4.0 ppm, nonbell pepper at 4.0 ppm and vegetable, fruiting group 8, except nonbell pepper at 1.3 ppm as they will be superseded by the tolerances being established with this action.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 4, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.511 the table in paragraph (a) is amended as follows:

■ i. Remove the entries for Almond; Fruit, pome, group 11; Okra; Pepper, nonbell and Vegetable, fruiting, group 8, except nonbell pepper;

■ ii. Revising the entries for Llama and Loganberry to read Ilama and Logan respectively; and

■ iii. Add alphabetically new entries.

The revisions and additions read as follows:

§ 180.511 Buprofezin; tolerances of residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Bean, succulent	0.02
* * * * *	
Brassica, leafy greens, subgroup 5B	60
* * * * *	
Fruit, pome, group 11–10, except pear and pear, Asian	3.0
* * * * *	
Ilama	0.30
* * * * *	
Logan	0.30
* * * * *	
Nut, tree group 14	0.05
* * * * *	
Pear	6.0
Pear, Asian	6.0
Persimmon	1.9
* * * * *	
Tea[1]	20
Turnip, greens	60
* * * * *	
Vegetable, fruiting, group 8–10	2.0
* * * * *	

[1] There are no U.S. registrations at this time.

* * * * *

[FR Doc. 2012–25548 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412

[CMS–1588–F2]

RIN 0938–AR12

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers; Correcting Amendment

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects technical errors in the regulations text of the final rule that appeared in the August 31, 2012 **Federal Register** entitled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers'' (hereinafter referred to as the FY 2013 IPPS/LTCH PPS final rule).

DATES: *Effective Date:* This correcting amendment is effective October 12, 2012.

Applicability Date: The provisions of this correcting amendment are applicable October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Errors

In the FY 2013 Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System final rule (hereinafter referred to as the FY 2013 IPPS/LTCH PPS final rule) (FR Doc. 2012–19079 of August 31, 2012 (77 FR 53258)), there were several typographical and technical errors in the regulations text that are identified and corrected in this correcting amendment. The provisions in this correcting amendment apply to long-term care hospital (LTCH) prospective payment system (PPS) payments.

In finalizing the regulations text changes for the FY 2013 LTCH PPS provisions (77 FR 53680), we made the following errors:

• In § 412.534(h)(6), we inadvertently omitted regulations text that specified our methodology for determining the percentage of discharges during a LTCH's or satellite facility's cost reporting period beginning on or after July 1, 2012 and before October 1, 2012 that will not be counted towards the 25-percent threshold during such cost reporting period.

• In § 412.536(a)(3)(i)—

++ We inadvertently omitted regulations text that specified the discharges to which the 25-percent payment adjustment threshold policy applies for LTCHs with cost reporting periods beginning on or after July 1, 2012 and before October 1, 2012; and

++ We made an error in the timeframe during which the 25-percent payment adjustment threshold policy will not apply for certain LTCHs (that is, those LTCHs with a cost reporting period beginning on or after July 1, 2012 and before October 1, 2012).

• In § 412.536(a)(3)(ii), we made an error in citing the timeframe during which the 25-percent payment adjustment threshold policy is in effect for certain LTCHs (that is, those LTCHs with a cost reporting period beginning on or after July 1, 2012 and before October 1, 2012), as well as an error in the timeframe during which discharges occurring during such LTCHs' cost reporting periods will not be counted towards the 25-percent threshold.

We are correcting these regulations text errors to ensure that the regulations text reflects the finalized 25-percent payment adjustment threshold policy set forth in the preamble of the final rule (77 FR 53483 through 53486).

II. Waiver of Proposed Rulemaking and Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We find that there is good cause to waive both the notice and comment and delayed effective date requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest. We believe it is in the public interest for our regulation text to accurately reflect the policy on the 25-percent payment adjustment threshold which was adopted in the FY 2013 IPPS/LTCH PPS final rule. Therefore delaying the effective date of these corrections would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in the FY 2013 IPPS/LTCH PPS final rule. As indicated previously, this correcting amendment corrects technical and typographical errors in the regulations text of the FY 2013 IPPS/LTCH PPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting amendment is intended to ensure that the regulations text accurately reflects the policies adopted in the FY 2013 IPPS/LTCH PPS final rule. Therefore, for the reasons set forth previously, we believe we have good cause to waive the notice and comment and effective date requirements.

List of Subjects for 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

As noted in section I. of this correcting amendment, the Centers for Medicare & Medicaid Services is making the following correcting amendments to 42 CFR part 412:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), and sec. 124 of Pub. L. 106–113 (113 Stat. 1501A–332).

■ 2. Amend § 412.534 as follows:

■ A. Redesignating paragraph (h)(6)(ii) as paragraph (h)(6)(iii).

■ B. Adding a new paragraph (h)(6)(ii). The addition reads as follows:

§ 412.534 Special payment provisions for long-term care hospitals within hospitals and satellites of long-term care hospitals.

* * * * *

(h) * * *

(6) * * *

(ii) In determining whether the percentage of discharges during a long-term care hospital's or satellite facility's cost reporting period beginning on or after July 1, 2012 and before October 1, 2012 exceeds the 25-percent threshold, those discharges occurring on or after October 1, 2012 and before the beginning of the hospital's or satellite facility's next cost reporting period will not be counted towards that threshold.

* * * * *

§ 412.536 [Amend]

■ 3. Amend § 412.536 as follows:

■ A. Revising paragraph (a)(3)(i).

■ B. In paragraph (a)(3)(ii)—

(i) The phrase ''before July 1, 2013'' is removed and the phrase ''before October 1, 2012'' is added in its place.

(ii) The phrase ''before October 1, 2013,'' is removed and the phrase ''before the beginning of the hospital's next cost reporting period,'' is added in is place.

The revision reads as follows:

§ 412.536 Special payment provisions for long-term care hospitals and satellites of long-term care hospitals that discharged Medicare patients admitted from a hospital not located in the same building or on the same campus as the long-term care hospital or satellite of the long-term care hospital.

(a) * * *

(3) * * *

(i) Payments to long-term care hospitals described in paragraph (a)(1)(iv) of this section are determined using the methodology specified in either paragraph (b)(1) or paragraph (b)(2) of this section, for discharges occurring prior to October 1, 2012 during the hospital's cost reporting period beginning on or after July 1, 2012 and before October 1, 2012. Such policies will not be applied to the discharges occurring on or after October 1, 2012 and before the beginning of the hospital's next cost reporting period.

* * * * *

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

Dated: October 10, 2012.

Oliver Potts,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2012–25464 Filed 10–12–12; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8251]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Maryland:				
Annapolis, City of, Anne Arundel County.	240009	December 7, 1973, Emerg; November 4, 1981, Reg; October 16, 2012, Susp.	October 16, 2012	October 16, 2012.
Anne Arundel County, Unincorporated Areas.	240008	March 3, 1972, Emerg; May 2, 1983, Reg; October 16, 2012, Susp.	*.....do	Do.
Highland Beach, Town of, Anne Arundel County.	240161	July 31, 1975, Emerg; November 4, 1981, Reg; October 16, 2012, Susp.	.....do	Do.
Pennsylvania:				
Alexandria, Borough of, Huntingdon County.	420481	June 1, 1973, Emerg; February 1, 1980, Reg; October 16, 2012, Susp.	.....do	Do.
Barree, Township of, Huntingdon County.	421683	June 11, 1979, Emerg; September 10, 1984, Reg; October 16, 2012, Susp.	.....do	Do.
Brady, Township of, Huntingdon County.	421684	November 25, 1975, Emerg; February 17, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Carbon, Township of, Huntingdon County.	421685	December 12, 1977, Emerg; June 19, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Cass, Township of, Huntingdon County.	421686	January 21, 1977, Emerg; November 1, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
Clay, Township of, Huntingdon County.	421687	April 25, 1977, Emerg; August 16, 1988, Reg; October 16, 2012, Susp.	.....do	Do.
Coalmont, Borough of, Huntingdon County.	420484	April 26, 1977, Emerg; August 3, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Cromwell, Township of, Huntingdon County.	421688	April 20, 1976, Emerg; December 4, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
Dublin, Township of, Huntingdon County.	421689	January 20, 1978, Emerg; December 4, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
Dudley, Borough of, Huntingdon County.	421681	August 9, 1982, Emerg; September 24, 1984, Reg; October 16, 2012, Susp.	.....do	Do.
Franklin, Township of, Huntingdon County.	422573	March 23, 1977, Emerg; February 17, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Henderson, Township of, Huntingdon County.	420960	January 21, 1974, Emerg; August 3, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Hopewell, Township of, Huntingdon County.	421690	April 25, 1979, Emerg; August 15, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Huntingdon, Borough of, Huntingdon County.	420486	April 16, 1973, Emerg; September 29, 1978, Reg; October 16, 2012, Susp.	.....do	Do.
Jackson, Township of, Huntingdon County.	421691	December 21, 1978, Emerg; August 3, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Juniata, Township of, Huntingdon County.	421692	February 4, 1976, Emerg; February 17, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Logan, Township of, Huntingdon County.	421694	March 20, 1978, Emerg; August 3, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Mapleton, Borough of, Huntingdon County.	420487	April 19, 1973, Emerg; July 5, 1977, Reg; October 16, 2012, Susp.	.....do	Do.
Mill Creek, Borough of, Huntingdon County.	420488	August 22, 1975, Emerg; March 2, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Miller, Township of, Huntingdon County.	421695	February 17, 1977, Emerg; March 2, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Morris, Township of, Huntingdon County.	421696	August 9, 1982, Emerg; December 4, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
Mount Union, Borough of, Huntingdon County.	420489	November 10, 1972, Emerg; July 18, 1977, Reg; October 16, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Oneida, Township of, Huntingdon County.	421697	March 14, 1975, Emerg; March 2, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Orbisonia, Borough of, Huntingdon County.	421682	October 15, 1975, Emerg; December 31, 1982, Reg; October 16, 2012, Susp.	.....do	Do.
Penn, Township of, Huntingdon County.	421698	February 17, 1976, Emerg; November 15, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
Petersburg, Borough of, Huntingdon County.	420490	August 3, 1976, Emerg; August 15, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Porter, Township of, Huntingdon County.	421699	August 22, 1975, Emerg; March 16, 1981, Reg; October 16, 2012, Susp.	.....do	Do.
Rockhill, Borough of, Huntingdon County.	422575	November 14, 1975, Emerg; July 3, 1990, Reg; October 16, 2012, Susp.	.....do	Do.
Saltillo, Borough of, Huntingdon County.	420492	April 26, 1977, Emerg; October 15, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
Shirley, Township of, Huntingdon County.	421700	February 4, 1976, Emerg; August 15, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Shirleysburg, Borough of, Huntingdon County.	420493	June 1, 1976, Emerg; April 15, 1986, Reg; October 16, 2012, Susp.	.....do	Do.
Smithfield, Township of, Huntingdon County.	420494	March 9, 1973, Emerg; March 15, 1977, Reg; October 16, 2012, Susp.	.....do	Do.
Springfield, Township of, Huntingdon County.	421701	October 14, 1975, Emerg; December 4, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
Spruce Creek, Township of, Huntingdon County.	422621	February 18, 1975, Emerg; March 2, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Tell, Township of, Huntingdon County.	421702	October 15, 1975, Emerg; June 11, 1982, Reg; October 16, 2012, Susp.	.....do	Do.
Three Springs, Borough of, Huntingdon County.	422576	March 17, 1977, Emerg; October 1, 1982, Reg; October 16, 2012, Susp.	.....do	Do.
Todd, Township of, Huntingdon County.	421703	September 15, 1975, Emerg; August 15, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Union, Township of, Huntingdon County.	421704	July 21, 1982, Emerg; March 2, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
Walker, Township of, Huntingdon County.	422577	April 8, 1977, Emerg; September 10, 1984, Reg; October 16, 2012, Susp.	.....do	Do.
Warriors Mark, Township of, Huntingdon County.	421705	November 22, 1977, Emerg; March 2, 1989, Reg; October 16, 2012, Susp.	.....do	Do.
West, Township of, Huntingdon County.	421706	February 17, 1976, Emerg; December 4, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
Wood, Township of, Huntingdon County.	421707	June 20, 1975, Emerg; November 1, 1985, Reg; October 16, 2012, Susp.	.....do	Do.
West Virginia:				
Falling Springs, Corporation of (Town of Renick), Greenbrier County.	540243	October 6, 1975, Emerg; September 24, 1984, Reg; October 16, 2012, Susp.	.....do	Do.
Greenbrier County, Unincorporated Areas.	540040	June 24, 1975, Emerg; January 15, 1988, Reg; October 16, 2012, Susp.	.....do	Do.
Rainelle, Town of, Greenbrier County.	540228	September 3, 1975, Emerg; November 19, 1987, Reg; October 16, 2012, Susp.	.....do	Do.
Ronceverte, City of, Greenbrier County.	540043	March 10, 1975, Emerg; May 17, 1990, Reg; October 16, 2012, Susp.	.....do	Do.
Rupert, Town of, Greenbrier County	540044	January 24, 1975, Emerg; August 24, 1984, Reg; October 16, 2012, Susp.	.....do	Do.
White Sulphur Springs, City of, Greenbrier County.	540045	November 20, 1974, Emerg; August 1, 1978, Reg; October 16, 2012, Susp.	.....do	Do.
Region IV				
Alabama:				
Chatom, Town of, Washington County.	010376	November 1, 1999, Emerg; September 29, 2006, Reg; October 16, 2012, Susp.	.....do	Do.
Millry, Town of, Washington County	010207	May 18, 2005, Emerg; September 29, 2006, Reg; October 16, 2012, Susp.	.....do	Do.
Washington County, Unincorporated Areas.	010302	January 12, 1976, Emerg; August 1, 1987, Reg; October 16, 2012, Susp.	.....do	Do.
Region V				
Indiana:				
Mecca, Town of, Parke County	180330	December 21, 1978, Emerg; April 1, 1988, Reg; October 16, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Montezuma, Town of, Parke County	180194	June 19, 1975, Emerg; April 1, 1988, Reg; October 16, 2012, Susp.	.....do	Do.
Parke County, Unincorporated Areas.	180192	September 30, 1988, Emerg; N/A, Reg; October 16, 2012, Susp.	.....do	Do.
Michigan:				
Cedarville, Township of, Menominee County.	260659	N/A, Emerg; June 24, 1993, Reg; October 16, 2012, Susp.	.....do	Do.
Gourley, Township of, Menominee County.	260455	October 23, 1995, Emerg; November 5, 2009, Reg; October 16, 2012, Susp.	.....do	Do.
Holmes, Township of, Menominee County.	260457	July 28, 1995, Emerg; November 5, 2009, Reg; October 16, 2012, Susp.	.....do	Do.
Ingallston, Township of, Menominee County.	260660	N/A, Emerg; September 28, 1979, Reg; October 16, 2012, Susp.	.....do	Do.
Mellen, Township of, Menominee County.	260692	June 9, 1993, Emerg; November 5, 2009, Reg; October 16, 2012, Susp.	.....do	Do.
Menominee, City of, Menominee County.	260138	May 1, 1973, Emerg; August 1, 1978, Reg; October 16, 2012, Susp.	.....do	Do.
Menominee, Township of, Menominee County.	260702	N/A, Emerg; January 7, 1992, Reg; October 16, 2012, Susp.	.....do	Do.
Meyer, Township of, Menominee County.	260458	September 22, 1995, Emerg; August 19, 1997, Reg; October 16, 2012, Susp.	.....do	Do.
Spalding, Township of, Menominee County.	260461	July 28, 1995, Emerg; November 5, 2009, Reg; October 16, 2012, Susp.	.....do	Do.
Stephenson, City of, Menominee County.	260139	August 7, 1973, Emerg; May 16, 1977, Reg; October 16, 2012, Susp.	.....do	Do.
Wisconsin:				
Elroy, City of, Juneau County	550201	June 26, 1975, Emerg; September 18, 1991, Reg; October 16, 2012, Susp.	.....do	Do.
Juneau County, Unincorporated Areas.	550580	July 3, 1975, Emerg; September 18, 1991, Reg; October 16, 2012, Susp.	.....do	Do.
Mauston, City of, Juneau County	550204	July 24, 1975, Emerg; September 18, 1991, Reg; October 16, 2012, Susp.	.....do	Do.
Necedah, Village of, Juneau County	550205	N/A, Emerg; January 27, 1992, Reg; October 16, 2012, Susp.	.....do	Do.
New Lisbon, City of, Juneau County	550206	July 8, 1975, Emerg; September 18, 1991, Reg; October 16, 2012, Susp.	.....do	Do.
Wonewoc, Village of, Juneau County.	550208	July 18, 1975, Emerg; September 30, 1988, Reg; October 16, 2012, Susp.	.....do	Do.
Region VI				
Oklahoma:				
Glenpool, City of, Tulsa County	400208	February 6, 1975, Emerg; March 2, 1981, Reg; October 16, 2012, Susp.	.....do	Do.
Jenks, City of, Tulsa County	400209	November 1, 1974, Emerg; February 17, 1982, Reg; October 16, 2012, Susp.	.....do	Do.
Sand Springs, City of, Tulsa County	400211	August 5, 1974, Emerg; June 15, 1981, Reg; October 16, 2012, Susp.	.....do	Do.
Skiatook, Town of, Tulsa County	400212	July 2, 1974, Emerg; July 16, 1980, Reg; October 16, 2012, Susp.	.....do	Do.
Sperry, Town of, Tulsa County	400213	June 17, 1975, Emerg; July 16, 1981, Reg; October 16, 2012, Susp.	.....do	Do.
Tulsa County, Unincorporated Areas	400462	April 21, 1975, Emerg; September 16, 1982, Reg; October 16, 2012, Susp.	.....do	Do.
Region VIII				
Colorado:				
Grand Junction, City of, Mesa County.	080117	October 13, 1978, Emerg; January 6, 1983, Reg; October 16, 2012, Susp.	.....do	Do.
Mesa County, Unincorporated Areas	080115	July 26, 1973, Emerg; July 3, 1978, Reg; October 16, 2012, Susp.	.....do	Do.
Region IX				
California:				
Daly City, City of, San Mateo County.	060317	August 4, 1975, Emerg; July 31, 1979, Reg; October 16, 2012, Susp.	.....do	Do.
Region X				
Washington:				
Bucoda, Town of, Thurston County	530189	February 10, 1975, Emerg; September 2, 1981, Reg; October 16, 2012, Susp.	.....do	Do.
Lacey, City of, Thurston County	530190	May 7, 1975, Emerg; July 16, 1980, Reg; October 16, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Olympia, City of, Thurston County ...	530191	October 3, 1974, Emerg; February 17, 1982, Reg; October 16, 2012, Susp.	.....do	Do.
Rainier, City of, Thurston County	530260	N/A, Emerg; March 29, 1999, Reg; October 16, 2012, Susp.	.....do	Do.
Tenino, City of, Thurston County	530302	February 18, 1975, Emerg; June 4, 1980, Reg; October 16, 2012, Susp.	.....do	Do.
Thurston County, Unincorporated Areas.	530188	September 13, 1974, Emerg; December 1, 1982, Reg; October 16, 2012, Susp.	.....do	Do.
Tumwater, City of, Thurston County	530192	December 18, 1974, Emerg; August 1, 1980, Reg; October 16, 2012, Susp.	.....do	Do.
Yelm, City of, Thurston County	530310	May 21, 1990, Emerg; June 19, 1999, Reg; October 16, 2012, Susp.	.....do	Do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 9, 2012.

Edward L. Connor,

Deputy Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–25557 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket No. 11–82; FCC 12–22]

Extension of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period that expires on September 30, 2015, the information collection associated with the Commission's rules in the *Extension of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers Report and Order* (*Order*). This notice is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 4.3, 4.7, and 4.9 published at 77 FR 25088, April 27, 2012, are effective December 16, 2012.

FOR FURTHER INFORMATION CONTACT: Gregory F. Intoccia, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at (202) 418–1470, or email: *gregory.intoccia@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on September 17, 2012, OMB approved, for a period that expires on September 30, 2015, the information collection requirements contained in the Commission's *Order,* FCC 12–22, regarding Interconnected Voice over Internet Protocol (VoIP) outage reporting rules, published at 77 FR, 25088, April 27, 2012.

Synopsis

As required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on September 17, 2012, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR Part 4. OMB approved the *Order* under the PRA Submission, Form OMB 83i, dated July 24, 2012, titled *Section 4.1 and 4.2 and Part 4 of the Commission's rules Concerning Disruptions to Communications.* Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. The OMB control number is 3060–0484. The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

OMB Control Number: 3060–0484.

OMB Approval Date: September 17, 2012.

Expiration Date: September 30, 2015.

Title: Extension of the Commission's Rules Regarding Outage Reporting to Interconnected Voice over Internet Protocol Service Providers and Broadband Internet Service Providers

Form Number: N/A.

Estimated Time per Response: 1.25 to 2 hours.

Total Annual Burden: 29,647 hours.

Total Annual Cost: N/A.

Obligation to Respond: The number of respondents/responses is 118 respondents 15,444 responses. The statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i)–(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 615a–l, 621(b)(3), 621(d), 1302(a) and 1302(b) of the Communications Act of 1934, as amended; and section 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 3504.

Nature and Extent of Confidentiality: Outage reports filed pursuant to part 4 of the Commission's rules are presumed confidential. The information in the filings may be shared with the Department of Homeland Security only under appropriate confidential disclosure provisions. Other persons seeking disclosure must follow the procedures delineated in 47 CFR 0.457 and 0.459 of the Commission's rules for requests for and disclosure of information.

Privacy Act: No impact(s).

Needs and Uses: The Commission extended mandatory outage reporting rules to facilities-based and non-facilities-based interconnected VoIP service providers and applied the current Part 4 definition of ''outage'' to outages of interconnected VoIP service, covering the complete loss of service and/or connectivity to customers at least 30 minutes duration that potentially affects at least 900,000 user minutes of

interconnected VoIP services and results in complete loss of service; or potentially affects any special offices and facilities such as a 911 facility. Collecting data on significant outages of interconnected VoIP services will help the Commission to monitor compliance with the statutory 911 obligations of interconnected VoIP service providers, as well as help ensure the Nation's current and future 911 systems are as reliable and resilient as possible both on a day-to-day basis and in times of a major emergency. The Commission recognizes that consumers are increasingly relying on Internet Protocol (IP)-based technologies as substitutes for communications services provided by older communications technologies, and increasingly use interconnected VoIP services in lieu of traditional telephone service. As of December 31, 2010, 31 percent of the more than 87 million residential telephone subscriptions in the United States were users of interconnected VoIP providers—an increase of 21 percent (from 22.4 million to 27.1 million) from the end of 2009. Additionally, the Commission estimates that approximately 31 percent of residential wireline 911 calls are made using VoIP service. The information collected is administered by the FCC's Public Safety and Homeland Security Bureau (PSHSB) which maintains an Internet Web site portal for the electronic submission of the required outage reports. In addition, provision is made for the submission of required data by other than electronic means in cases where electronic submission is not feasible.

First, Respondents must submit electronically via the Network Outage Reporting System (NORS) (See *http://transition.fcc.gov/pshsb/services/cip/nors/nors.html*) notification to the Federal Communications Commission within: (a) 240 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 9–1–1 special facility, in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 9–1–1 facility as the provider's contact person for communications outages at that facility; in this case, the provider shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility; or (b) 24 hours of discovering that these providers have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that: Potentially affects at least 900,000 user minutes of interconnected VoIP service and results in complete loss of service; or potentially affects any special offices and facilities. Second, Respondents must submit electronically via NORS a Final Communications Outage Report to the Commission not later than thirty days after discovering the outage.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–25201 Filed 10–16–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–1265–02]

RIN 0648–BC61

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), is intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) November 1, 2012.

FOR FURTHER INFORMATION CONTACT: Colby Brady (Northwest Region, NMFS), phone: 206–526–6117, fax: 206–526–6736, *colby.brady@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. On November 3, 2010, NMFS published a proposed rule to implement the 2011–2012 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011–12 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by several inseason actions (76 FR 39313, 76 FR 67092, 76 FR 79122, 77 FR 12503, 77 FR 22679, 77 FR 24634, 77 FR 47322). On September 27, 2011, NMFS published a proposed rule to implement final 2012 specifications for overfished species and assessed flatfish species pursuant to Secretarial Amendment 1 to the Groundfish FMP (76 FR 59634). That final rule was effective January 1, 2012.

The Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended the changes to current groundfish management measures implemented by this action at its September 12–September 17, 2012 meeting. The Council recommended adjusting groundfish management measures for the remainder of the biennial period to respond to updated fishery information and additional inseason management needs. The adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2012. Estimated mortality of overfished and target species is the result of management measures designed to achieve, to the extent possible, but not exceed, annual catch limits (ACLs) of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

Open Access (OA) Fixed Gear Fishery Management Measures

Sablefish Daily Trip Limit (DTL) Trip Limits South of 36° N. Lat.

To ensure harvest opportunities for the OA fixed gear sablefish DTL fishery, and that its harvest guideline south of 36° N. lat. is further attained, the Council considered increases to trip limits for sablefish in this fishery and the potential impacts on overall catch levels. The Council's Groundfish Management Team (GMT) made model-based landings projections of the OA fixed gear sablefish DTL fishery south of 36° N. lat. for the remainder of 2012. These projections were based on the most recent information available under the current 2012 trip limit scenario, and predicted a harvest projection of 41 percent (126 mt) of this fishery's harvest guideline (309 mt) under the status quo trip limits. Landings projections with the proposed increased trip limits predict a harvest of 52 percent (161 mt) of this fishery's harvest guideline. Projections for the other three fixed gear sablefish fisheries were tracking within their targets for 2012.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the OA fixed gear sablefish DTL fishery south of 36° N. lat. that increase OA fixed gear sablefish DTL fishery limits from ''300 lb per day (136 kg), or one landing per week of up to 1,350 lb (612 kg), not to exceed 2,700 lb (1225 kg) per two months'' to ''350 lb (159 kg) per day, or one landing per week of up to 1,750 lb (794 kg), not to exceed 3,500 lb (1,588 kg) per 2 months'' beginning in period 6, November 1, 2012 through the end of the year.

Recreational Fishery Management Measures

California Southern Management Area (SMA) Rockfish Conservation Area (RCA) Adjustments South of 34°27′ N. Lat.

Due to uncertainty in the catch estimates, and to reduce the potential for cowcod mortality to exceed the non-trawl allocation in 2012, the Council considered modifications to the current SMA RCA boundary. Recreational fishing for most groundfish is currently prohibited seaward of a boundary line approximating the 60 fathom depth (110 meters) contour in California south of 34°27′ N. lat. The new boundary would expand the closed area, restricting fishing to the area seaward of a boundary line approximating the 50 fathom depth (91 meters) contour, south of 34°27′ N. lat., beginning November 1, 2012, through December 31, 2012 (period 6). The Council considered this change as a precautionary measure to address uncertainty in the catch estimates, and to reduce the potential for cowcod mortality to exceed the non-trawl allocation in 2012.

Therefore, the Council recommended and NMFS is implementing a shift to the seaward boundary line of the recreational Rockfish Conservation Area in the Southern Management Area south of 34°27′ N. lat. from the 60 fathom depth contour (110 meters) to the 50 fathom depth contour (91 meters), beginning November 1, 2012, through December 31, 2012 (period 6).

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is consistent with the Pacific Coast Groundfish FMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

These inseason changes in sablefish limits and recreational RCAs are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to partially waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective November 1, 2012.

At the September Council meeting, the Council recommended that these changes, which are based on the most recent information available, be implemented by November 1, 2012. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable law. The adjustments to management measures in this document affect commercial and recreational fisheries in southern California. These adjustments to management measures must be implemented in a timely manner, by November 1, 2012, to: allow OA fixed gear fishermen an opportunity to harvest their limits in 2012 for sablefish without exceeding the ACL south of 36° N. lat.; and to allow recreational fishermen continued opportunities to harvest abundant species, while reducing the potential for cowcod mortality to exceed the non-trawl allocation in 2012. These changes in the OA fixed gear fishery south of 36° and recreational fishery south of 34°27′ N. lat. will continue to allow fishermen opportunities to harvest available healthy stocks while staying within the ACLs for target and overfished species. If this rule is not implemented immediately, the public could have incorrect information regarding allowed OA fixed gear trip limits south of 36°, and recreational rockfish conservation area boundaries south of 34°27′ N. lat. which would cause confusion and be inconsistent with the Council's intent. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change by November 1, 2012, allows harvest as intended by the Council in fisheries that are important to coastal communities in a manner that prevents ACLs of overfished and target species from being exceeded.

No aspect of this action is controversial and no change in operating practices in the fishery is required from those intended in this inseason adjustment.

Delaying these changes would also keep management measures in place that are not based on the best available information. Such delay would impair achievement of the Pacific Coast Groundfish FMP goals and objectives of managing for appropriate harvest levels while providing for year-round fishing and marketing opportunities.

Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and to partially waive the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: October 12, 2012.

Emily H. Menashes,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. Table 3 (South) to part 660, subpart F is revised to read as follows:

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Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 11012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 1,800 lb/ 2 months					
9	South of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,350 lb, not to exceed 2,700 lb/ 2 months					350 lb/day, or 1 landing per week of up to 1,750 lb, not to exceed 3,500 lb/ 2 months
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months	1,000 lb/ 2 months		
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
29	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
36	**Lingcod[3/]**	CLOSED		400 lb/ month			CLOSED
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish[4/]**	Unlimited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	*40° 10' - 38° N. lat.*	*100 fm line - 200 fm line [6/]*	*100 fm line[5/] - 150 fm line[5/]*				*100 fm line[5/] - 200 fm line[5/ 6/]*
43	*38° - 34° 27' N. lat.*	*100 fm line[5/] - 150 fm line[5/]*					
44	*South of 34° 27' N. lat.*	*100 fm line[5/] - 150 fm line[5/] along the mainland coast; shoreline - 150 fm line[5/] around islands*					
45		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. In § 660.360, paragraph (c)(3)(i)(A)(*5*) is revised to read as follows:

§ 660.360 Recreational fishery-management measures.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) * * *

(*5*) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph and in paragraph (c)(3)(v) of this section and ''other flatfish'' as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 50 fm (91.5 m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 20 fm (37 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and ''other flatfish'') is closed entirely from January 1 through February 28 (i.e., prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27′ N. lat. is prohibited seaward of a boundary line approximating the 50 fm (91.5 m) depth contour from January 1 through December 31, except in the CCAs where

fishing is prohibited seaward of the 20 fm (37 m) depth contour when the fishing season is open.

* * * * *

[FR Doc. 2012–25566 Filed 10–16–12; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 77, No. 201
Wednesday, October 17, 2012

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AD96

Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements; Initial Regulatory Flexibility Analysis

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Initial regulatory flexibility analysis.

SUMMARY: On August 30, 2012, the Federal Deposit Insurance Corporation (FDIC), together with the Board of Governors of the Federal Reserve System (FRB) and Office of the Comptroller of the Currency (OCC) (together, the agencies) published in the **Federal Register** a joint notice of proposed rulemaking, titled, ''Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements'' (Standardized Approach NPR or Proposed Rule). The Proposed Rule would revise and harmonize the agencies' rules for calculating risk-weighted assets to enhance risk-sensitivity and address weaknesses identified over recent years, including by incorporating certain international capital standards of the Basel Committee on Banking Supervision (BCBS) set forth in the standardized approach of the international accord titled, ''International Convergency of Capital Measurement and Capital Standards: A Revised Framework'', as revised by the BCBS in 2006 and 2009, as well as other proposals set forth in consultative papers of the BCBS.

Section 3(a) of the Regulatory Flexibility Act (RFA) directs all federal agencies to publish an initial regulatory flexibility analysis (IRFA), or a summary thereof, describing the impact of a proposed rule on small entities anytime an agency is required to publish a notice of proposed rulemaking in the **Federal Register**. As provided in the Standardized Approach NPR, the agencies are separately publishing initial regulatory flexibility analyses for the Proposed Rule. Accordingly, the FDIC is seeking comment on the IRFA provided in this **Federal Register** document, which describes the economic impact of the Standardized Approach NPR, in accordance with the requirements of the RFA. Comments received in connection with this IRFA will be considered for purposes of the development of any final rule to implement the Standardized Approach NPR.

DATES: Comments on this initial regulatory flexibility analysis must be submitted on or before November 16, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.
- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Instructions:* Comments submitted must include ''FDIC'' and ''RIN 3064–AD96''. Comments received will be posted without change to *http://www.fdic.gov/regulations/law/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Ryan Billingsley, Chief, Capital Policy Section, *rbillingsley@fdic.gov;* Karl Reitz, Chief, Capital Markets Strategies Section, *kreitz@fdic.gov,* Division of Risk Management Supervision; Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Mark Handzlik, Counsel, *mhandzlik@fdic.gov,* Michael Phillips, Counsel, *mphillips@fdic.govSupervision Branch,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On August 30, 2012, the agencies published in the **Federal Register** the Standardized Approach NPR to revise the agencies' general risk-based capital requirements for determining risk-weighted assets (that is, the calculation of the denominator of a banking organization's risk-based capital ratios).[1] The Proposed Rule would revise and harmonize the agencies' rules for calculating risk-weighted assets to enhance risk-sensitivity and address weaknesses identified over recent years, including by incorporating certain international capital standards of the Basel Committee on Banking Supervision (BCBS) set forth in the standardized approach of the international accord titled, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (Basel II), as revised by the BCBS between 2006 and 2009, as well as other proposals addressed in recent consultative papers of the BCBS.[2] In the Standardized Approach NPR, the agencies also proposed alternatives to credit ratings for calculating risk-weighted assets for certain assets, consistent with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). The revisions include methodologies for determining risk-weighted assets for residential mortgages, securitization exposures, and counterparty credit risk. The changes in the Standardized Approach NPR are proposed to take effect on January 1, 2015, with an option for early adoption. The Standardized Approach NPR also introduces disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with $50 billion or more in total assets, including disclosures related to regulatory capital instruments.

Section 3(a) of the RFA[3] requires an agency to publish in the **Federal Register** an IRFA or a summary of its IRFA, or to certify that the proposed rule will not have a significant economic impact on a substantial

[1] 77 FR 52888 (Aug. 30, 2012).

[2] Subsequent to the issuance of Basel II, in December, 2010, the BCBS issued ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III). The U.S. implementation of Basel III has been proposed by the agencies in a separate notice of proposed rulemaking that is discussed later in this document.

[3] 5 U.S.C. 601 *et seq.*

number of small entities. For purposes of the IRFA, a small entity includes a banking organization with total assets of $175 million or less.

As provided in the Standardized Approach NPR, the agencies are separately publishing their respective IRFA. Accordingly, the FDIC is seeking comment on the IRFA provided in this **Federal Register** document, which describes the economic impact of the Standardized Approach NPR, in accordance with the requirements of the RFA. Comments received in connection with this IRFA will be considered for purposes of the development of any final rule to implement the Standardized Approach NPR. A summary of the FDIC's IRFA for the Standardized Approach NPR is set forth below.

Summary of the FDIC's IRFA

In accordance with the requirements of the RFA, the FDIC is publishing this summary of the IRFA for the Standardized Approach NPR.[4] For purposes of this IRFA, the FDIC analyzed the potential economic impact of the Standardized Approach NPR on the small entities that it regulates.

The FDIC welcomes comment on all aspects of the summary of its IRFA. Comments received in response to this IRFA will be considered by the FDIC for purposes of any final rule implementing the Standardized Approach NPR. The FDIC will conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

A. Reasons Why the Proposed Rule Is Being Considered by the Agencies; Statement of the Objectives of the Proposed Rule; and Legal Basis

As discussed in the Standardized Approach NPR, the agencies are proposing to revise their capital requirements to promote safe and sound banking practices, implement Basel II (as later revised), and harmonize capital requirements across charter type. The NPR also proposes alternatives to the use of credit ratings consistent with section 939A of the Dodd-Frank Act by revising regulatory capital requirements to remove all references to, and requirements of reliance on, credit ratings. Federal law authorizes each of the agencies to prescribe capital standards for the banking organizations it regulates.

B. Small Entities Affected by the Proposal

Under regulations issued by the Small Business Administration,[5] a small entity includes a depository institution or bank holding company with total assets of $175 million or less. As of March 31, 2012, the FDIC was the primary Federal regulator for approximately 2,433 small state nonmember banks, 115 small savings banks, and 45 small state savings associations (collectively, small banks and savings associations).

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Standardized Approach NPR includes changes to the general risk-based capital requirements that address the calculation of risk-weighted assets and affect small banks and savings associations. The Proposed Rule would affect small banks and savings associations, including:

1. Changing the denominator of the risk-based capital ratios by revising the asset risk weights;
2. Revising the treatment of counterparty credit risk;
3. Replacing references to credit ratings with alternative measures of creditworthiness;
4. Providing more comprehensive recognition of collateral and guarantees; and
5. Providing a more favorable capital treatment for transactions cleared through qualifying central counterparties.

These changes are designed to enhance the risk-sensitivity of the calculation of risk-weighted assets. Therefore, capital requirements may go down for some assets and up for others. For those assets with a higher risk weight under the NPR, that increase may be large in some instances, for example, the equivalent of a dollar-for-dollar capital charge for some securitization exposures.

In order to estimate the impact of the Standardized Approach NPR on small banks and savings associations, the FDIC used currently available data from the quarterly Consolidated Report of Condition and Income (Call Reports) filed by small banks and savings associations to approximate the change in capital under the proposed rule. After comparing the existing risk-based capital rules with the proposed rule, the FDIC estimates that risk-weighted assets may increase by 10 percent under the proposed rule. Using this assumption, the FDIC estimates that a total of 76 small banks and savings associations will need to raise additional capital to meet their regulatory minimums. The FDIC estimates that this total projected shortfall will be $34 million and that the cost of lost tax benefits associated with increasing total capital by $34 million will be approximately $0.2 million per year. Averaged across the 76 affected institutions, the cost is approximately $2,500 per institution per year.

To comply with the requirements of the Proposed Rule, small banks and savings associations would be required to change their internal reporting processes. These changes would require some additional personnel training and expenses related to new systems (or modification of existing systems) for calculating regulatory capital ratios.

Additionally, small banks and savings associations that hold certain exposures would be required to obtain additional information under the proposed rules in order to determine the applicable risk weights. For example, small banks and savings associations that hold exposures to sovereign entities other than the United States, foreign depository institutions, or foreign public sector entities would have to acquire Country Risk Classification ratings produced by the Organization for Economic Co-Operation and Development (OECD) to determine the applicable risk weights. Small banks and savings associations that hold residential mortgage exposures would be required to have and maintain information about certain underwriting features of the mortgage as well as the loan-to-value (LTV) ratio in order to determine the applicable risk weight. Generally, small banks and savings associations that hold securitization exposures would need to obtain sufficient information about the underlying exposures to satisfy due diligence requirements and apply either the simplified supervisory formula approach (SSFA) or the gross-up approach described in section __.43 of the Proposed Rule to calculate the appropriate risk weight, or be required to assign a 1,250 percent risk weight to the exposure.

Small banks and savings associations typically do not hold significant exposures to foreign entities or securitization exposures, and the agencies expect any additional burden related to calculating risk weights for these exposures, or holding capital against these exposures, would be relatively modest. The FDIC estimates that, for small banks and savings associations, the cost of implementing the alternative measures of creditworthiness will be approximately $39,000 per institution.

[4] 77 FR 52888.

[5] *See* 13 CFR 121.201.

Some small banks and savings associations may hold significant residential mortgage exposures. If a small bank or savings association originates the exposure, it should have sufficient information to determine the applicable risk weight under the proposed rule. However, if the exposure is acquired from another institution, the information needed to determine the applicable risk weight should normally be collected for portfolio monitoring purposes and internal risk management.

Small banks and savings associations would not be subject to the disclosure requirements in the Proposed Rule. However, the agencies expect to modify regulatory reporting requirements that apply to small banks and savings associations to reflect the changes made to the agencies' capital requirements in the Proposed Rule. The agencies expect to propose these changes to the relevant reporting forms in a separate notice.

To determine if the Proposed Rule has a significant economic impact on small banks and savings associations we compared the estimated annual cost with annual noninterest expense and annual salaries and employee benefits for each institution. If the estimated annual cost was greater than or equal to 2.5 percent of total noninterest expense or 5 percent of annual salaries and employee benefits we classified the impact as significant. The FDIC has concluded that the proposals included in the NPR would exceed this threshold for 2,413 small state nonmember banks, 114 small savings banks, and 45 small state savings institutions. Accordingly, for the purposes of this IRFA, the FDIC has concluded that the changes proposed in the Standardized Approach NPR, when considered without regard to other changes to the capital requirements that the agencies simultaneously are proposing, would have a significant economic impact on a substantial number of small banks and savings associations.

Additionally, it may be informative to consider the changes proposed in the Standardized Approach NPR together with changes proposed in the separate notice of proposed rulemaking published jointly by the agencies in the **Federal Register** on August 30, 2012, titled, ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action; Proposed Rule'' (Basel III NPR).[6] The changes described in the Basel III NPR include changes to minimum capital requirements that would impact small banks and savings associations. These include a more conservative definition of regulatory capital, a new common equity tier 1 capital ratio, a higher minimum tier 1 capital ratio, new thresholds for prompt corrective action purposes, and a new capital conservation buffer.

To estimate the impact of the Basel III NPR on the capital needs of small banks and savings associations, the FDIC estimated the amount of capital such institutions will need to raise to meet the new minimum standards relative to the amount of capital they currently hold. To estimate new capital ratios and requirements, the FDIC used currently available data from the quarterly Call Report submitted by small banks and savings associations to approximate capital under the Basel III NPR. The Call Reports show that most small banks and savings associations have capital levels well above the existing minimum requirements.

After comparing existing levels with the proposed new requirements under the Basel III NPR, the FDIC determined that 62 small banks and savings associations that it regulates would fall short of the proposed increased capital requirements. Together, those institutions would need to raise approximately $164 million in regulatory capital to meet the proposed minimum requirements set forth in the Basel III NPR. The FDIC estimates that the cost of lost tax benefits associated with increasing total capital by $164 million will be approximately $0.9 million per year. Averaged across such institutions, the cost attributed to the Basel III NPR is approximately $15,000 per institution per year.

The FDIC concluded for purposes of its IRFA for the Basel III NPR[7] that the changes described in the Basel III NPR, when considered without regard to changes in this NPR, would not result in a significant economic impact on a substantial number of small banks and savings associations, given the nominal compliance requirements that likely would result from the future adoption by the agencies of the Basel III NPR.

As noted above, the FDIC has concluded that the proposed changes in the Standardized Approach NPR would result in a significant economic impact on a substantial number of small banks and savings associations. Further, if both the Standardized Approach NPR and the Basel III NPR were adopted, there would be a significant economic impact on a substantial number of small banks and savings associations.

D. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The FDIC is unaware of any duplicative, overlapping, or conflicting federal rules. As noted previously, the FDIC anticipates issuing a separate proposal to implement reporting requirements that are tied to (but do not overlap or duplicate) the requirements of the proposed rules. The FDIC seeks comments and information regarding any such federal rules that are duplicative, overlapping, or otherwise in conflict with the Proposed Rule.

E. Discussion of Significant Alternatives to the Proposed Rule

The agencies have sought to incorporate flexibility into the Proposed Rule and lessen burden and complexity for small banks and savings associations wherever possible, consistent with safety and soundness and applicable law, including the Dodd-Frank Act. The agencies are requesting comment on potential options for simplifying the Proposed Rule and reducing burden, including whether to permit certain small banks and savings associations to continue using portions of the current general risk-based capital rules to calculate risk-weighted assets. Additionally, the agencies proposed the following alternatives and flexibility features:

- Small banks and savings associations are not subject to the enhanced disclosure requirements of the Proposed Rule.
- Small banks and savings associations would continue to apply a 100 percent risk weight to corporate exposures (as described in section __.32 of the Proposed Rule).
- Small banks and savings associations may choose to apply the simpler gross-up method for securitization exposures rather than the SSFA (as described in section __.43 of the Proposed Rule).
- The proposed rule offers small banks and savings associations a choice between a simpler and more complex methods of risk weighting equity exposures to investment funds (as described in section __.53 of the Proposed Rule).

The FDIC welcomes comment on any significant alternatives to the Standardized Approach NPR applicable to small banks and savings associations that would minimize their impact on those entities.

Dated at Washington, DC, this 12th day of October, 2012.

[6] 77 FR 52792.

[7] *Id.* at 52836.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–25495 Filed 10–16–12; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–357]

Schedules of Controlled Substances: Placement of Methylone Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes placing 3,4-methylenedioxy-N-methylcathinone (methylone) including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule I of the Controlled Substances Act (CSA). This proposed action is pursuant to the CSA which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking.

DATES: DEA will permit interested persons to file written comments on this proposal pursuant to 21 CFR 1308.43(g). Electronic comments must be submitted and written comments must be postmarked on or before December 17, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may file a request for hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and 1316.47. Requests for hearing, notices of appearance, and waivers of participation must be received on or before November 16, 2012.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–357'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document and supplemental information to this proposed rule are also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/OD, 8701 Morrissette Drive, Springfield, VA 22152. All requests for hearing must be sent to Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Alan G. Santos, Associate Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

Request for Hearing, Notice of Appearance at or Waiver of Participation in Hearing

In accordance with the CSA, this action is a formal rulemaking ''on the record after opportunity for a hearing.'' 21 U.S.C. 811(a). Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557) and 21 CFR 1308.41. Pursuant to 21 CFR 1308.44(a)–(c), requests for hearing, notices of appearance, and waivers of participation may be submitted only by interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' Such requests or notices must conform to the requirements of 21 CFR 1308.44(a) or (b) and 1316.47 or 1316.48, as applicable. A request or notice should state, with particularity, the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and 1316.49, including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of the hearing is restricted to ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *'' Requests for hearing, notices of appearance at the hearing, and waivers of participation in the hearing should be submitted to DEA using the address information provided above.

Legal Authority

The DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act and the Controlled Substances Import and

Export Act (21 U.S.C. 801–971), as amended (hereinafter, ''CSA''). The implementing regulations for these statutes are found in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. Under the CSA, controlled substances are classified in one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances by statute are found at 21 U.S.C. 812(c) and the current list of scheduled substances are published at 21 CFR Part 1308.

The CSA permits these schedules to be modified by providing that scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of HHS, or (3) on the petition of any interested party. 21 U.S.C. 811(a). The Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *'' 21 U.S.C. 811(a). The findings required for the placement of a controlled substance in Schedule I are: ''(A) The drug or other substance has a high potential for abuse. (B) The drug or substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.'' 21 U.S.C. 812(b).

Background

On September 8, 2011, the Administrator of the DEA published a Notice of Intent to temporarily place 3,4-methylenedioxy-N-methylcathinone (methylone) along with two other synthetic cathinones (4-methyl-N-methylcathinone (mephedrone) and 3,4-methylenedioxypyrovalerone (MDPV)) into Schedule I pursuant to the temporary scheduling provisions of the CSA (76 FR 55616). Following this, on October 21, 2011, the Administrator published a Final Order in the **Federal Register** (76 FR 65371) amending 21 CFR 1308.11(g) to temporarily place these three synthetic cathinones into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This Final Order, which became effective on the date of publication, was based on findings by the Administrator of the DEA that the temporary scheduling of these three synthetic cathinones was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). At the time the Final Order took effect, Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2) (2011)) required that the temporary scheduling of a substance expire at the end of one year from the date of issuance of the scheduling order, and it provided that, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance could be extended for up to six months.[1] Under this provision, the temporary scheduling of methylone expires on October 20, 2012, unless extended pursuant to 21 U.S.C. 811(h)(2). An extension until April 20, 2013, is being ordered by the Administrator in a separate action.

As described in the October 21, 2011, Final Order, methylone is a designer drug of the phenethylamine class and is structurally and pharmacologically similar to amphetamine, 3,4-methylenedioxymethamphetamine (MDMA), cathinone and other related substances. The addition of a beta-keto (β-ketone) substituent to the phenethylamine core structure produces a group of substances that have β-keto-phenethylamine as the core structure. Methylone has a β-keto-phenethylamine core structure. Methylone has been used as research chemical. Based on the review of the scientific literature, there are no known medical uses for methylone. The Assistant Secretary of Health for the U.S. Department of Health and Human Services (HHS) has advised that there are no exemptions or approvals in effect for methylone under section 505 (21 U.S.C. 355) of the Federal Food, Drug and Cosmetic Act.

Proposed Determination To Schedule Methylone

This NPRM proposes the permanent scheduling of methylone pursuant to 21 U.S.C. 811(a)(1). On March 30, 2012, DEA requested a scientific and medical evaluation and scheduling recommendation from the Assistant Secretary of Health for HHS for methylone, mephedrone and MDPV pursuant to 21 U.S.C. 811(b). Upon receipt and evaluation of the scientific and medical evaluation and scheduling recommendation from the Assistant Secretary,[2] DEA concluded its analysis of all other relevant data for the proposal to place methylone into Schedule I of the CSA.

Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in the scheduling decision. Please note that both the DEA and HHS analyses are available under ''Supporting and Related Material'' of the public docket for this proposed rule at *www.regulations.gov* under docket number DEA–357.

1. *The Drug's Actual or Relative Potential for Abuse:* The abuse potential of methylone is associated with its ability to evoke pharmacological effects similar to those evoked by the Schedule I and II substances such as cathinone (Schedule I), methcathinone (Schedule I), 3,4-MDMA (Schedule I), amphetamine (Schedule II), methamphetamine (Schedule II), and cocaine (Schedule II). These Schedule I and II substances have a high potential for abuse.

The legislative history of the CSA suggests the following four prongs to consider in determining whether a particular drug or substance has potential for abuse:[3]

i. There is evidence that individuals are taking the drug or other substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

ii. There is significant diversion of the drug or substance from legitimate drug channels; or

iii. Individuals are taking the substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs; or

iv. The drug is a new drug so related in its action to a drug or other substance already listed as having a potential for abuse to make it likely that the drug or other substance will have the same potential for abuse as such drugs, thus making it reasonable to assume that there may be significant diversion from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

[1] On July 9, 2012, President Obama signed the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (FDASIA), which amended several provisions of the CSA. Subtitle D of FDASIA is titled the ''Synthetic Drug Abuse Prevention Act of 2012.'' In particular, FDASIA amended Schedule I of section 202(c) of the CSA to include mephedrone and MDPV but not methylone, and amended section 201(h)(2) to increase the maximum timeframes for temporary scheduling. Public Law 112–144, Sections 1152(b) and 1153.

[2] DEA received from HHS Evaluation and Recommendation documents with respect to methylone, but not for mephedrone and MDPV. However, mephedrone and MDPV are listed as Schedule I substances under FDASIA.

[3] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); 1970 U.S.C.C.A.N. 4566, 4601.

With respect to the first prong, a number of case reports and case series have shown that individuals are taking methylone and products containing methylone in amounts sufficient to induce adverse health effects similar to those induced by amphetamine, methamphetamine, and MDMA, Schedule I and II substances. These effects included elevated body temperature, increases in heart rate and respiratory exchange, changes in blood pressure, seizures, erratic behavior, and coma. Even death has been reported following the abuse of methylone or products containing methylone. Further, law enforcement encounters indicate the occurrence of a fatal automotive accident that was caused by a driver under the influence of a product containing methylone.

In considering evidence of significant diversion of the drug or substance from legitimate drug channels under the second prong, it must be noted that as of October 21, 2011, methylone has been temporarily controlled as a Schedule I substance and thus has not been legally available unless for research purposes. However, the National Forensic Laboratory Information System (NFLIS), which details over 2,500 reports from state and local forensic laboratories, identified methylone in drug related exhibits for a period from January 2009 to June 2012 from 42 states. The System to Retrieve Information from Drug Evidence (STRIDE), which details reports from federal forensic laboratories, identified methylone in 220 drug related exhibits from a period from January 2009 to June 2012.

For the third prong, HHS states that there is no currently accepted medical use for methylone and no medical practitioner is currently licensed by law to administer methylone. Indeed, the FDA has not approved a new drug application (NDA) for methylone for any therapeutic indication, and no investigational new drug (IND) application for methylone is currently active. Thus, with no accepted medical use or administering practitioners, individuals currently using products containing methylone are doing so on their own initiative without medical advice from a practitioner licensed to administer methylone.

With regard to the fourth prong, HHS states that methylone produces pharmacological effects similar to those produced by the Schedule I and II central nervous system (CNS) substances such as amphetamine, methamphetamine, cocaine, and MDMA which have a high potential for abuse. Methylone, like these Schedule I and II substances, affects the concentrations of the neurotransmitters dopamine, serotonin and norepinephrine in the CNS. In drug discrimination assays, methylone substitutes for MDMA, amphetamine, methamphetamine, and cocaine, which suggests that methylone will likely produce subjective effects in humans similar to these substances and have a similar pattern of abuse. Methylone, like methamphetamine, amphetamine, and cocaine, is a CNS stimulant and produces locomotor stimulant activity in animals.

Methylone has no known medical use in the United States but evidence demonstrates that methylone is being abused by individuals for its psychoactive effects. Methylone has been encountered by law enforcement throughout the United States as reported in NFLIS and in STRIDE databases suggesting that individuals are abusing methylone. Methylone has also been identified during the toxicological screening of individual human urine samples which also demonstrates that individuals are abusing this substance. In addition, information from poison centers indicates the abuse of synthetic cathinones which likely include methylone. The American Association of Poison Control Centers (AAPCC) [4] reported in a press release that poison centers took 304 calls in 2010 regarding synthetic cathinone exposures and 6,138 calls in 2011. As of September 12, 2012, poison centers have received 2,251 calls relating to these products this year. These calls were received in poison centers representing at least 47 states and the District of Columbia. Although methylone may not be specifically identified during exposure calls or identified by toxicology testing by AAPCC, it is likely that some of these retail products described by the callers contained methylone, based on the identification of methylone in approximately 26% of all synthetic cathinones related exhibits reported to NFLIS from January 2009 to June 2012.

State public health and poison centers have warned of the dangers associated with the use of synthetic cathinones and their associated products being found on the designer drug market. In response to the abuse of methylone and other synthetic cathinones, as of September 2012, at least 42 states have emergency scheduled or enacted legislation placing regulatory controls on some or many of the synthetic cathinones including mephedrone, methylone, MDPV and/or a defined general class of cathinones. At least 27 states specifically control methylone. Numerous local jurisdictions have also placed controls on methylone and other synthetic cathinones. All five branches of the U.S. military prohibit military personnel from possessing or using synthetic cathinones including methylone.

Methylone has been reported to cause a number of adverse effects that are characteristic of stimulants like methamphetamine, amphetamine, and cocaine. Adverse effects associated with the consumption of methylone include those typical of a sympathomimetic agent such as palpitations, hyperthermia, seizures, hyponatremia, bruxism, sweating, hypertension, tachycardia, headache, palpitations, thirst, mydriasis, tremor, fever, sweating, and hypertension. Other effects that have been reported from the use of methylone include psychological effects such as confusion, psychosis, paranoia, hallucinations, combativeness, and agitation. Finally, reports of death for individuals abusing methylone indicate that methylone is a serious public health threat.

2. *Scientific Evidence of the Drug's Pharmacological Effects, If Known:* In the recommendation from HHS for the placement of methylone in Schedule I of the CSA, HHS states that based on the results of preclinical studies and the toxicological profile observed in emergency room cases and medical examiner cases it is probable that methylone produces pharmacological effects in humans that are similar to those produced by the Schedule I and II substances amphetamine, methamphetamine, cocaine, and MDMA. These findings are based on published data on the release of monoamines, inhibition of reuptake of monoamines, and in vivo studies (microdialysis, locomotor activity, body temperature, drug discrimination) and are also based on data from studies (locomotor, drug discrimination, in vitro receptor binding, and functional assays) conducted by National Institute on Drug Abuse (NIDA) contract researchers. The preclinical data showed that methylone can substitute for MDMA or amphetamine in rats trained to discriminate amphetamine or MDMA, respectively. Methylone, like methamphetamine, amphetamine, and cocaine, is a CNS stimulant and produces locomotor stimulant effects in animals. Methylone, like methamphetamine, has a rewarding effect as evidenced by conditioned place preference tests. Methylone is an inhibitor of dopamine, serotonin and norepinephrine uptake and also causes the release of these neurotransmitters in

[4] AAPCC is a non-profit, national organization that represents the poison centers of the United States.

the CNS. Furthermore, studies show that methylone, like MDMA, can be cytotoxic to liver cells. HHS further states that the toxicological profile observed in emergency room and medical examiner cases involving methylone demonstrate that the pharmacological profile observed in humans is in accordance with preclinical data.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Methylone is a β-ketophenethylamine (i.e., synthetic cathinone) that is structurally and pharmacologically similar to amphetamine, methamphetamine, MDMA, cathinone and other related substances. Methylone can be prepared from its corresponding ketone by a two-step synthesis. Studies indicate that humans metabolize methylone and metabolites of methylone have been found in the urine samples of humans and animals given methylone. Research in anti-depressant and anti-parkinson agents resulted in the synthesis and patenting of methylone. According to HHS, methylone has no approved medical use in the United States, does not have an approved NDA, and is not currently marketed in the United States in an FDA-approved drug product. A drug has a ''currently accepted medical use'' if all of the following five elements have been satisfied: the drug's chemistry is known and reproducible; and there are adequate safety studies; and there are adequate and well-controlled studies proving efficacy; and the drug is accepted by qualified experts; and the scientific evidence is widely available. 57 Fed. Reg. 10499 (March 26, 1992). According to HHS, there are no published clinical studies involving methylone. DEA has also not found any references to clinical studies involving methylone's efficacy and safety in the scientific and medical literature. Although the chemistry of methylone is known and has been reproduced, as mentioned above there are no clinical studies involving methylone. Thus, methylone has no currently accepted medical use in treatment in the United States and there is a lack of accepted safety for use of methylone under medical supervision.

4. *Its History and Current Pattern of Abuse:* Methylone is a synthetic cathinone that emerged on the United States' illicit drug market in 2009 and prior to its temporary control was perceived as being a 'legal' alternative to cocaine, methamphetamine, and MDMA. Methylone is falsely marketed as ''research chemicals,'' ''plant food,'' or ''bath salts'' and has been sold at smoke shops, head shops, convenience stores, adult book stores, and gas stations and can also be purchased on the Internet under a variety of product names (White Dove, Explosion, Tranquility etc.). It is commonly encountered in the form of powders, capsules, and tablets. The packages of these commercial products usually contain the warning ''not for human consumption.'' Poison centers reported a large number of toxic exposures to these products as indicated by the number of exposure calls related to synthetic cathinones. A large majority of these exposures were by intentional abuse, misuse, or suspected suicide. Most of these exposures were described as acute. AAPCC data also identified the most common route of administration for the synthetic cathinones as inhalation/nasal. Information from published scientific studies indicate that the most common routes of administration for methylone is ingestion by swallowing capsules or tablets or nasal insufflation by snorting the powder. Evidence from poison centers, published case reports, and law enforcement encounters suggest that the main users of methylone are young adults. These substances are popular among youths and young adults with males appearing to abuse methylone more than females. There is evidence that methylone may be co-ingested with other substances including other synthetic cathinones, pharmaceutical agents, or other recreational substances.

5. *The Scope, Duration, and Significance of Abuse:* Evidence that methylone is being abused is confirmed by drug courts,[5] calls to poison centers, and encounters by law enforcement. Methylone has been identified in specimens from individuals submitted for testing by drug court participants. Drug courts submitted to DEA 18 reports that detail the analysis of biological specimens that contained synthetic cathinones. Methylone was mentioned in 5 of these reports. Evidence from poison centers also indicates that the abuse of synthetic cathinones like methylone is widespread. The AAPCC reported in a press release that poison centers took 304 calls in 2010 regarding synthetic cathinone exposures and 6,138 calls in 2011. As of September 12, 2012, poison centers have received 2,251 calls relating to these products this year. These calls were received in poison centers representing at least 47 states and the District of Columbia. Methylone may not have been specifically mentioned during the exposure calls but it is likely that some of these retail products described by the callers contained methylone based on the identification of methylone in approximately 26% of all synthetic cathinones related exhibits reported to NFLIS from January 2009 to June 2012. Evidence of the increased abuse of methylone is supported by law enforcement encounters of methylone. Forensic laboratories have analyzed drug exhibits received from state, local, or federal law enforcement agencies that were found to contain methylone. The National Forensic Laboratory Information System (NFLIS) is a program sponsored by DEA's Office of Diversion Control. NFLIS compiles information on exhibits analyzed in state and local law enforcement laboratories. The System to Retrieve Information from Drug Evidence (STRIDE) is a DEA database which compiles information on exhibits analyzed in DEA laboratories. NFLIS and STRIDE together capture data for all substances reported by forensic laboratory analyses. Methylone has been encountered by law enforcement as reported in NFLIS.[6] NFLIS details 2,797 reports from state and local forensic laboratories identifying methylone in drug related exhibits for a period from January 2009 to June 2012 from 42 States. NFLIS registered 4 reports from 3 states containing methylone in 2009. However, there were 71 reports from 18 states related to these substances registered in NFLIS in 2010 and there were 1,655 reports from 41 states in 2011. From January to June 2012 there were 1,067 reports from 36 states. STRIDE also details 220 reports from federal forensic laboratories identifying methylone in drug related exhibits for a period from January 2009 to June 2012. STRIDE (which reports data from 6 DEA laboratories) registered 1 exhibit pertaining to methylone in 2009. There were 7 exhibits pertaining to the trafficking, distribution and abuse of methylone registered in STRIDE in 2010 and 107 drug exhibits in 2011. In 2012, 105 drug exhibits pertaining to the trafficking, distribution and abuse of methylone were recorded in the STRIDE database.

[5] Drug courts were developed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, and the use of appropriate sanctions and other rehabilitation services. Drug courts analyze specimens from participants for new and existing drugs of abuse.

[6] State and local forensic drug reports from January 2009 to June 2012, analyzed on September 12, 2012. The 2012 drug reports are likely to be incomplete as of September 12, 2012, due to laboratory reporting lag time.

At selected United States ports of entry, the U.S. Customs and Border Protection (CBP) has encountered shipments of products containing methylone. The most commonly identified synthetic cathinone was methylone. As of July 2012, methylone was identified in 127 of 330 shipments encountered by CBP from June 2008 to July 2012. These shipments of methylone were in powdered form ranging from gram to multi-kilogram quantities. Most of the shipments of these synthetic cathinones that contained methylone originated in China and were destined for delivery throughout the United States to places like Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Illinois, Kansas, Louisiana, Oklahoma, Oregon, Missouri, Nevada, New Mexico, Tennessee, Texas, Washington, and West Virginia.

Concerns over the abuse of methylone and other synthetic cathinones have prompted many states to control these substances. As of September 2012, at least 42 states have emergency scheduled or enacted legislation placing regulatory controls on some or many of the synthetic cathinones including methylone. In addition, the U.S. Armed Forces prohibited the use of synthetic cathinones including mephedrone, methylone and MDPV.

6. *What, if any, Risk There is to the Public Health:* Law enforcement, military, and public health officials have reported exposure incidents that demonstrate the dangers associated with methylone to both the individual abusers and other affected individuals. Numerous individuals have presented at emergency departments following exposure to methylone or products containing methylone. Case reports describe presentations to emergency departments of individuals exposed to methylone with symptoms that include tachycardia, headache, palpitations, agitation, anxiety, mydriasis, tremor, fever, sweating, and hypertension. Some individuals under the influence of methylone have acted violently and unpredictably causing harm, or even death, to themselves or others. In addition, individuals suspected of driving under the influence of intoxicating substances have been found to have positive test results for methylone and some of these incidents involving methylone intoxications have resulted in the deaths of individuals. There are at least three reported deaths in which methylone was ruled as the cause of death by the medical examiner or after an autopsy and there are many reports in which methylone was implicated (i.e., the primary cause of death is not methylone toxicity) in deaths. Additionally, products containing methylone and other synthetic cathinones often do not bear labeling information regarding their ingredients, and if they do it may not contain the expected active ingredients or identify the health risks and potential hazards associated with these products.

7. *Its Psychic or Physiological Dependence Liability:* According to HHS, there are no studies or case reports that document the psychic or physiological dependence potential of methylone. However, HHS states that because methylone shares pharmacological properties with those of the Schedule I and II substances amphetamine, methamphetamine, cocaine, and MDMA, it is probable that methylone has a dependence profile similar to that of these substances which are known to cause substance dependence.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* Methylone is not considered an immediate precursor of any controlled substance of the CSA as defined by 21 U.S.C 802(23).

Conclusion: Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and based on DEA's consideration of its own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of methylone. As such, DEA hereby proposes to schedule methylone as a controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as Schedules I, II, III, IV, and V. The statute outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendations of the Assistant Secretary for Health of HHS and review of all available data, the Administrator of DEA, pursuant to 21 U.S.C. 812(b)(1), finds that:

(1) 3,4-methylenedioxy-N-methylcathinone (methylone) has a high potential for abuse;

(2) 3,4-methylenedioxy-N-methylcathinone (methylone) has no currently accepted medical use in treatment in the United States; and

(3) There is a lack of accepted safety for use of 3,4-methylenedioxy-N-methylcathinone (methylone) under medical supervision.

Based on these findings, the Administrator of DEA concludes that 3,4-methylenedioxy-N-methylcathinone (methylone) including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrants control in Schedule I of the CSA (21 U.S.C. 812(b)(1)).

Requirements for Handling Methylone

Methylone is currently scheduled on a temporary basis in Schedule I and is subject to the CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, possession, dispensing, importing, and exporting of a Schedule I controlled substance, including those listed below. These controls on methylone will continue on a permanent basis if this rule is finalized as proposed:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with methylone or who desires to manufacture, distribute, dispense, import, export, engage in research or conduct instructional activities with methylone would need to be registered to conduct such activities pursuant to 21 U.S.C. 822 and 958 and in accordance with 21 CFR Part 1301.

Security. Methylone would be subject to Schedule I security requirements and would need to be manufactured and distributed pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71, 1301.72(a), (c) and (d), 1301.73, 1301.74, 1301.75(a) and (c), 1301.76.

Labeling and Packaging. All labels and labeling for commercial containers of methylone which is distributed on or after the effective date of the finalization of this rule would need to be in accordance with 21 CFR 1302.03–1302.07, pursuant to 21 U.S.C. 825.

Quotas. Quotas for methylone will be established based on registrations granted and quota applications received pursuant to part 1303 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of methylone would be required to keep an inventory of all stocks of methylone on hand pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Every registrant who desires registration in Schedule I for methylone would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21 U.S.C. 827 and in accordance with 21

CFR 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.

Reports. All registrants required to submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.33 would be required to do so regarding methylone.

Order Forms. All registrants involved in the distribution of methylone would be required to comply with the order form requirements pursuant to 21 U.S.C. 828 and 21 CFR 1305.

Importation and Exportation. All importation and exportation of methylone would need to be done in accordance with 21 CFR Part 1312, pursuant to 21 U.S.C. 952, 953, 957, and 958.

Criminal Liability. Any activity with methylone not authorized by, or in violation of, Subchapter I Part D and Subchapter II of the CSA occurring on or after effective date of the finalization of this proposed rule would be unlawful.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 13175

This proposed rule will not have tribal implications and will not impose substantial direct compliance costs on Indian tribal governments.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR Part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11 is amended by adding a new paragraph (d)(36) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(36) 3,4-Methylenedioxy-N-methylcathinone (Methylone)—7540

* * * * *

Dated: October 10, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–25509 Filed 10–16–12; 8:45 am]

BILLING CODE 4410–09–P

POSTAL SERVICE

39 CFR Part 111

Implementation of Full-Service Intelligent Mail Requirements for Automation Prices

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) throughout various sections to modify eligibility requirements for mailers to obtain automation prices for First-Class Mail®, Standard Mail®, Periodicals®, and Bound Printed Matter® when mailing postcards, letters, and flats. Effective January 2014, use of ''full-service'' Intelligent Mail® would be required to obtain automation prices. Additionally, the 10/24 transitional barcoded tray label format would be eliminated and mailers would be required to use the 24-digit Intelligent Mail barcode (IMb™) format on tray, tub, and sack labels.

DATES: We must receive your comments on or before November 16, 2012.

ADDRESSES: Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N., Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Comments and questions can also be emailed to *mailingstandards@usps.gov* using the subject line ''full-service January 2014.''

FOR FURTHER INFORMATION CONTACT:

Ana Cikowski, email: *ana.cikowski@usps.gov,* phone: 202–268–8079.

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SUPPLEMENTARY INFORMATION: On April 20, 2012, the Postal Service published an advance notice of proposed rulemaking in the **Federal Register** (77 FR 23643–23647) to require use of full-service Intelligent Mail to obtain automation prices for First-Class Mail (FCM), Standard Mail, Periodicals, and Bound Printed Matter (BPM) when mailing postcards, letters, and flats.

Background

In January 2009, the Postal Service offered the mailing industry two Intelligent Mail options for automation discounts: basic-service and full-service. Currently, a large number of mailers are using these options and reaping significant benefits and value.

When using the full-service option, mailers are required to: Apply unique Intelligent Mail barcodes (IMb) to identify each letter, postcard, and flat mailpiece; individually meet the eligibility requirements for automation prices according to class and shape; apply unique Intelligent Mail tray barcodes (IMtb) on trays, tubs, and sacks; apply unique Intelligent Mail container barcodes (IMcb) on placards for containers, such as pallets; schedule appointments through Facility Access and Shipment Tracking (FAST®) if their mail is accepted at an origin facility and entered at a downstream USPS™ processing facility; and use an approved electronic method to transmit to the Postal Service mailing documentation and postage statements. If the mailing is being prepared or presented on behalf of

another entity, the electronic documentation (eDoc) should include additional information to support the by/for mailing relationships. Effective January 2014, the requirements relative to the by/for relationships would be enforced.

We recognize that this proposal would require significant changes for mailers who currently benefit from automation discounts. Therefore, the Postal Service is proposing to implement initiatives to limit the impact on customers who enter small volume mailings, particularly for those customers who mail infrequently and have limited resources to adopt new mailing practices. Additional tools would be available for these mailers, and the associated, simplified requirements are described further in this notice.

Our proposal would continue the ongoing transformation of data visibility and evolution of technological innovations. Full-service Intelligent Mail combines the use of unique scan codes with the provision of electronic information regarding the makeup and preparation of mail, which provides high-value services and enables efficient mail processing.

The strategic vision of the Postal Service is to create 100 percent visibility in the mail stream by 2014. This vision would provide mailers with near real-time data that specify the location of mailpieces within the postal mail stream and the time of delivery for full-service mailpieces.

Full-service Intelligent Mail would offer numerous advantages to mailers and the Postal Service.

Advantages for Mailers:

- Mailers would be provided with comprehensive information on the status of mailings as they progress through the postal mail.
- Visibility would enable mailers to respond more effectively to customer inquiries on the status of valuable bills, statements, catalogs, and publications.
- Mailers would have access to free address correction and tracking information of mailpieces from mail entry to destination.
- The mailer's annual mailing fee for permits would be waived when postage statements contain 90 percent or more of full-service mailpieces.
- Mailers would be allowed to use the ''Mail Anywhere'' model, which allows the use of a single permit at any *PostalOne!*® site for mailings containing 90 percent or more of full-service mailpieces (applies to FCM, Standard Mail, Periodicals, and BPM).
- Mailers would be able to more effectively plan operations, assess the success of advertising campaigns, and improve customer interaction.

Advantages for the Postal Service

- Visibility into the flow of mail through the postal mail stream would enable enhanced diagnostics of service performance.
- Scan data on containers, trays, and mailpieces would allow the Postal Service to measure the number of hours and minutes between operations.
- Scan data would allow the Postal Service to identify operational bottlenecks and continue to improve service for commercial FCM, Standard Mail, and Periodicals.
- The ability to provide real-time alerts to postal operations would enable them to respond to and avoid potential service failures.
- Advance notification of volumes and makeup of commercial mail would enable improved resource planning.
- Accurate tracking of mail volumes as they move through the postal network would enable improved management and staffing of operations.
- Simplified mail acceptance processes would increase productivity and reduce costs.
- The ability to measure service performance would be available for each full-service mailer.

The mailer's use of full-service Intelligent Mail is an integral part of the Postal Service's ongoing strategy to provide cost-effective and service-responsive mailing services. Efficient use of postal resources can be achieved with advance information on content and makeup of the mail. As mail is processed and sorted, postal sorting equipment captures volume and destination information. The Postal Service has built and is refining systems that make information available to downstream postal facilities for use with operational planning. The planning data that is enabled through full-service mailings provides significant opportunities for improvements in efficiency and service performance. However, when a measurable percentage of mail (that is prepared and entered by large-volume commercial mailers and mail preparers) does not provide similar information, these benefits cannot be fully captured.

Full-service Intelligent Mail would also enable simplification of the current mail acceptance procedures. With the availability of full-service mailing data and unique identifiers, the business mail acceptance procedures would be streamlined by use of an automated verification process whereby allowing data to be captured on mail processing and other scanning equipment.

Since the introduction of the full-service Intelligent Mail requirements, over four years ago, the Postal Service has worked closely with mailers, software providers, and mail service providers to simplify, refine, and evolve full-service offerings. Thousands of mailers, software providers, and mail service providers have demonstrated the ability to meet the requirements for full-service Intelligent Mail.

Based on feedback provided by users of full-service Intelligent Mail, the use of full-service would transform the mailing industry. Unambiguous data would drive improvements across the broad spectrum of mailer and postal processes. Mailers who embrace full-service would thrive from continued use of full-service Intelligent Mail.

Transitioning to Full-Service Intelligent Mail

The Postal Service continues to develop enhancements, simplify existing tools, streamline the processes for mailers to prepare mailings, and provide ease of use for small and large mailers to transition to full-service Intelligent Mail. The Postal Service also recognizes that there maybe costs for mailers associated with converting to full-service Intelligent Mail.

In support of the proposal to transition to full-service Intelligent Mail and the elimination of automation discounts with the use of POSTNET™ barcodes, the Postal Service proposes to offer the following self-service tools, process enhancements, on-boarding simplifications, and postage incentives:

- Automated Business Reply Mail Tool—The USPS Automated Business Reply Mail® (ABRM) application is an online, self-service tool that allows Reply Mail customers to create domestic card-, letter-, and flat-size pieces of Business Reply Mail® (BRM™), Courtesy Reply Mail™ (CRM™), and Metered Reply Mail™ (MRM). ABRM also creates artwork for card- and letter-size pieces of Qualified Business Reply Mail™ (QBRM). In addition, ABRM provides the option to create a FIM & Barcode only for CRM and BRM artwork. The ABRM tool offers a number of features for Reply Mail customers, including the ability to: Design and create approved USPS camera-ready artwork with an Intelligent Mail barcode (IMb); place the barcode above the address block or in the barcode clear zone; add an image or logo related to the mailpiece; allow a third-party vendor or mail service provider to create artwork for clients through the ABRM tool; download

artwork designs in PDF and EPS formats; and store mailpieces and logos in the ABRM library for future use (up to 100MB).

• Intelligent Mail Small Business Tool—Intelligent Mail for Small Business Mailers (IMsb) is an online, self-service tool which allows a mailer to produce a unique IMb. This online tool is accessible through the Business Customer Gateway. It is intended for small volume mailers who enter mailings consisting of 5,000 pieces or fewer pieces with an annual maximum threshold of 125,000 pieces. The tool may be used for FCM and Standard Mail letter or flat mailings. The tool allows the mailer to upload an address file which is then processed for Delivery Point Validation. Standardized addresses with Intelligent Mail barcodes are returned in a .pdf format, which may be printed directly on an envelope or label by the mailer. Mailers are able to print unique tray labels. Mailers using the tool may qualify for the full-service Mixed Automated Area Distribution Center (MXD AADC) and Mixed Area Distribution Center (MXD ADC) automation prices. Postage statements are submitted electronically through Postage Wizard®.

• Simplified On-Boarding Process—To provide ease of use for full-service mailers, the Postal Service proposes to enhance the Business Customer Gateway (BCG). These enhancements include the following: Streamlined sign-up process; simplified steps to request a service; automatic assignment of Mailer IDs (MIDs); redesigned user interface, resulting in easier navigation, consolidation of screens, and contextual help screens; simplification of the Business Service Administration (BSA) functionality; and restructured validation and linkage of mailing permits. In addition, the enhancement would allow for identification of mail service providers as well as the ability to request MIDs and services on behalf of customers. In the case of small business users (one user/one account), account creation would be streamlined by automatically assigning MIDs and multiple services at the same time. When these proposed simplifications and enhancements are finalized, detailed information will be communicated to the mailing industry. Other enhancements to the on-boarding process would include the following:

—The Mail.dat® and Mail.XML™ error messages from the uploading of eDoc would be standardized to provide explanations of irregularities more clearly and allow mailers to take corrective action. This enhancement is underway and scheduled for a release.

—The *PostalOne!* dashboard is being enhanced by adding a functionality that would allow mailer-initiated job cancellations, resulting in the mailer's ability to cancel a job if none of the statements in the job have been finalized or checked in by a postal acceptance clerk. Also, if there is more than one statement in a job, all of the statements associated with the job would be cancelled through this user interface.

• Test Environment for Mailers—The Postal Service would develop a Test Environment for Mailers (TEM) certification process for software vendors and simplify the on-boarding process for mailers using certified software. Vendors would have the option to go through the TEM process by indicating which mailing capabilities are supported by their software, then completing test scenarios to demonstrate their software's functionality when generating and submitting eDoc files that vary by mail preparation requirements. These capabilities would be tracked by the Postal Service and made available through a published list consisting of authorized software for mailers. Potential software users could reference the list to evaluate if the listed software meets their mailing needs. Mailers would only be required to submit a single file to TEM when using software that meets the following criteria: The software is authorized for eDoc and full-service when passed through the TEM process for vendors for the capabilities that the vendor supports in production. Mailers using authorized software would submit a single file to TEM to demonstrate that they are able to use the software to generate accurate eDoc.

• Full-Service Technology Credit—In order to encourage mailers to convert to full-service Intelligent Mail, the Postal Service is proposing to offer a ''Full-Service Technology Credit'' (tech credit). This credit is intended to help offset the investment required to implement the necessary hardware and software infrastructure changes to support full-service mailings.

Eligibility Criteria

The mail volume of all ''Permit Holders'' and ''Mailing Agents'', as identified on a postage statement, would be evaluated across qualifying permits for each business location/Customer Registration ID (CRID). Each CRID that exceeds an annual volume of 125,000 qualifying pieces would be eligible to redeem a tech credit. All CRIDs would be considered for a tech credit regardless of current full-service status.

To determine the level of qualifying mail volume for each business location/CRID, the following steps would be taken:

• Mail volume associated with each permit as defined in the ''Permit Holder'' and/or ''Mailing Agent'' fields would be evaluated. Permit types would include:

• Permit Imprint
• Metered
• OMAS Imprint
• OMAS Metered
• Precancelled Stamp
• Periodicals
• Ghost.

• The following full-service eligible mailings would be considered as qualifying mail volume:

• FCM automation letters, cards, and flats.

• Standard Mail automation letters and flats—includes IMb Enhanced Carrier Route (ECR), except saturation flats.

• Periodicals automation/barcoded letters and flats—includes ECR letters & flats.

• BPM barcoded flats.

• The mail volume for a one-year period would be used in the evaluation.

• To be considered for the tech credit, permits must have been opened and business locations (CRIDs) established.

• When determining a mailer's qualifying volume, the Postal Service will consider the ''Permit Holder'' and ''Mailing Agent'' volume for each CRID and use the higher of the two volumes to determine the amount of the tech credit.

▪ The mail volume of the ''Permit Holder'' for each permit associated with a CRID would be aggregated.

▪ The mail volume of the ''Mailing Agent'' for each permit associated with a CRID would be aggregated.

• Each CRID that exceeds 125,000 full-service eligible pieces in annual mail volume (total of all eligible volume from all eligible permits) would be awarded one tech credit as follows:

• 125,001–500,000 pieces = $2,000 postage credit.

• 500,001–2,000,000 pieces = $3,000 postage credit.

• 2,000,001 + pieces = $5,000 postage credit.

• Each business location would be eligible to redeem only one tech credit.

▪ In the event there are multiple CRIDs identifying the same business location which have linked permits, the CRID with the highest eligible volume would receive the tech credit.

Notification Process

The Postal Service would provide advance notification to the industry regarding tech credit program status. This messaging would occur prior to the beginning of the promotion.

Redemption Process

The following credit redemption guidelines would be used:

- Any permit linked to a qualified CRID may redeem the tech credit as a postage credit in mailings that contain 90% or more full-service pieces.
- To apply this postage credit, the permit must be the paying permit in the mailing (identified as Permit Holder).
- The following permit types may be used:
  - Permit Imprint.
  - Additional Postage (ADDPOS).
  - OMAS Imprint.
  - OMAS Metered.
  - Metered.
  - Precancelled Stamp.
  - Periodicals.
- Mailers may redeem the tech credit through eDoc submission via Mail.dat or Mail.XML. Postal Wizard submissions would not be eligible.
- Upon submission of an eligible mailing, the tech credit would be automatically applied in full.
  - A partial tech credit amount could be applied to statements if the tech credit amount is greater than the total postage for the postage statement.
  - The remaining tech credit amount would be applied to subsequent statement(s).
- The tech credit redemption timeframe is proposed to run for a one-year period.

When final, further details regarding the ''Full-Service Technology Credit'' will be available on RIBBS™ at *https://ribbs.usps.gov.*

Summary of Comments and USPS Responses

The Postal Service received 110 comments from a variety of mailers and mailer associations. The comments that were received in addition to feedback from the Mailers Technical Advisory Council (MTAC), Postal Customer Council (PCC), and other outreach efforts, allowed the Postal Service to develop initiatives that should enable mailers to efficiently transition to full-service Intelligent Mail.

From the comments that were received, some mailers and mailer associations indicated that they look forward to embracing ''full-service'' Intelligent Mail, while others expressed concerns that were attributed to the five categories listed below:

1. Acceptance of Full-Service Intelligent Mail

Comments:

- I think that full-service should be mandatory for the mailers.
- Full-service Intelligent Mail is a streamlined benefit to mailers and adds a cost-savings to customers.
- Shops that do not want to invest and upgrade to full-service Intelligent Mail probably should not be entering mail anyway.
- As long as CONFIRM® tracking is provided, we are in acceptance of full-service Intelligent Mail.
- I certainly hope that the effective date is fixed and that the Postal Service doesn't plan to change the date several times. Yes, there is a lot involved in moving to full-service; however, the Postal Service has provided advanced notice and ample time to the industry. Many mailers have already begun preparing for full-service.
- We will be ready well in advance of January 2014.
- As a requirement for automation discounts, I fully support the move to full-service Intelligent Mail. We have been successfully using full-service.
- Our company chose to use a third-party vendor and have experienced ease with implementing full-service Intelligent Mail.
- Our company is ready for full-service Intelligent Mail.

Postal Service Responses:

- The Postal Service appreciates the positive feedback and is fully aware of the outstanding contributions rendered by the current users of full-service Intelligent Mail. These mailers have contributed to the collective knowledge-base and continue to receive numerous benefits from participating in the full-service offering. Mailers using full-service often espouse the significant value of additional data to drive change in their marketing strategies and have established additional avenues to acquire new customers. Due to the vital feedback provided by full-service participants, the Postal Service has a greater understanding of the needs of mailers and is working to simplify full-service requirements, which would potentially offer mailers a more user-friendly experience.

2. Cost/ROI

Comments:

- The use of vendors to meet the full-service requirement is too costly.
- Costs to convert to full-service would add up quickly.
- It would take years to recoup the return on my investment.
- In Postal Service industry, loans are hard to acquire.
- The requirement for full-service would cause the loss of my job.
- This new requirement for full-service would bankrupt my business.
- Full-service is advantageous for USPS but does not benefit the mailer.

Postal Service Responses:

- The Postal Service is continuing to research methods to simplify, streamline, and provide ease of use for small and large mailers to transition to full-service Intelligent Mail. The industry has been very responsive in providing feedback to help drive various strategies that ultimately will achieve full transition to the use of full-service.
- Two primary areas of focus for the Postal Service are as follows:

—Continuing to build a strong visibility platform.

—Acquiring new users of full-service Intelligent Mail through the use of the newly proposed ''Full-Service Technology Credit.''

- The Postal Service believes that full-service offers features that would increase the value of the mail by providing mailers with more current and ''clean'' addresses, gives mailers access to information about mailings that would enhance marketing strategies, eliminate unnecessary paperwork, and assist mailers with developing better tools to acquire new revenue sources. Full-service diagnostic reports would provide mailers with visibility into the mail stream and convey pertinent information, such as the number of pieces delivered, forwarded, and or handled as undeliverable as addressed (UAA).
- Another area of focus for USPS is simplification. In response to industry feedback, USPS is proposing simplification of full-service processes, which could result in lower costs for mailers when complying with full-service requirements. As described with this proposed rule, when entering full-service mailings, the Postal Service would support capabilities through advanced, thorough communications and provide simplified on-boarding processes.
- A new address correction service (ACS) alternative process, full-service ACS™ fulfillment, would be in place to allow mailers to receive records immediately and the billing of non-qualifying records as they are identified. This fulfillment would provide the records in the OneCode ACS® format via the Electronic Product Fulfillment (EPF) server.
- With simplification of full-service Intelligent Mail, mailers would experience many benefits as indicated in the USPS responses below.

- The Postal Service strongly disagrees that the investment of full-service is not worth the benefits gained.

3. Complexity

Comments:

- Provide me with the tools to effectively comply with this requirement.
- I want to do it myself without the additional costs of a vendor.
- Simplify the process.
- Make it easy for mailers to transition.
- Do not force me to use a vendor.
- Do not phase out the price eligibility for basic-service Intelligent Mail.
- Basic service is sufficient for my company; give mailers an option.
- I'm finding it very difficult to receive passing grades on my full-service tray labels and pallet placards for Periodicals.

Postal Service Responses:

- The Postal Service has taken all suggestions from the mailing industry under consideration regarding basic-service for Intelligent Mail and used these suggestions to simplify the full-service offering.
- The Postal Service is streamlining and simplifying the full-service process for mailers.
- Mailers who enter fewer than 10,000 pieces per mailing would be able to use simplified documentation and mail preparation requirements to qualify for full-service Intelligent Mail.
- An IMsb tool was developed and would provide a simplified method for mailers to obtain a unique IMb for mail pieces and help mailers to meet the eDoc requirements for simple mailings.
- The Postal Service would continue to provide IMtb for mailers who currently obtain tray labels from the Postal Service Label Print Center (LPC) in Topeka, Kansas.
- Alternative methods of associating mailpieces into handling units and handling units into containers would be implemented. The Postal Service plans to extend and expand the use of logical trays/containers for all mailings when mailers provide at least one sibling physical record (tray/container) for each logical tray/container; mailpieces can be associated to the logical tray.
- Information about visibility, start-the-clock, and mail data quality errors would be provided to the mail preparer or mail owner as identified in eDoc.
- The complexity for mail service providers who work with multiple small mail owners would be reduced, because they would not have to track volume and the assigned IMb for each mail owner when the volume is below a specific threshold.
- The on-boarding and submission processes for mailers would be simplified.
- The risk of error from incorrect data would be mitigated by verifying information for MIDs and CRIDs prior to eDoc submission.
- The Mail.dat and Mail.XML error messages from the uploading of eDoc would be standardized to provide explanations of irregularities more clearly, which would allow mailers to better understand the specific errors encountered and take corrective action.
- The process for mailers to initiate job cancellations through the *PostalOne!* dashboard would be improved.
- The Testing Environment for Mailers would be simplified.
- Effective September 2012, USPS provided new options for the preparation of pallets, trays, and sacks of FCM and Standard Mail allowing mailers to: Place trays or sacks of residual single-piece FCM letters and flats on the origin sectional center facility (SCF) pallet; place trays or sacks of Standard Mail letters and flats paid at single-piece FCM prices on the mixed network distribution center (NDC) pallet; and combine FCM or Standard Mail with different payment methods in a single mailing and place trays of single-piece letters or flats on a specified pallet after USPS verification is completed. Additionally, the Postal Service is adding human-readable text to content identifier number (CIN) codes to accommodate use with single-piece mailpieces.
- All pertinent USPS documents would be revised to clarify when container placards are required.
- Containers with placards would not be required when mailings consist of the following:

—A small volume mailing of FCM, Standard Mail, Periodicals, and BPM entered directly at the dock of a USPS processing facility or Destination Delivery Unit (DDU), as follows: Less than 72 linear feet—6 full layers of letter trays; 24 linear feet—3 full layers of tubs; or 500 pounds of bundles or sacks.

—A small volume mailing of Standard Mail, Periodicals, and BPM entered at a BMEU, as follows: Less than 72 linear feet—6 full layers of letter trays; 24 linear feet—3 full layers of tubs; or 500 pounds of bundles or sacks.

—A FCM mailing entered at a BMEU not prepared under a Customer Supplier Agreement (CSA).

—Mail that is not presented in a container with an IMcb and is entered at a facility other than a BMEU may not receive a Start-the-Clock scan and would be excluded from service measurement.

4. Clarity and Awareness

Comments:

- January 2014 is too soon to negotiate budget allowances.
- *PostalOne!* is not ready to handle all full-service mailings.
- The Postal Service is not leading the way.
- The tools for reports and tracking capabilities must be improved quickly.

Postal Service Responses:

- As described earlier in this proposed rule, plans are underway to enhance the BCG by providing a more user-friendly experience.
- Mailers entering simple mailings of fewer than 10,000 mailpieces would not be required to provide information on mailpieces that are nested in trays and containers. Additionally, mailers would be allowed to use the same unique piece sequence ID on all mailpieces within a mailing.
- Additionally, the Postal Service plans to use an IMb on all mailings and internal operational printing.
- The Postal Service is investing in short- and long-term enhancements to its *PostalOne!* infrastructure and conducting ongoing focus groups and workshops to glean suggestions from the mailing industry on future improvement opportunities.

5. General Comments

Comments:

- If automation and full-service Intelligent Mail barcodes are required, it is essential that USPS communicates to the industry its plans around consequences for mail quality errors.
- As specified with MERLIN, would the existing automation error thresholds and policies still apply for full-service mailings?
- What price consequences would be assessed for mailings that do not meet full-service qualifications?
- How would full-service failures be assessed and monitored?
- Where would the determination of full-service compliance be made—at induction or further downstream?
- Would mail service providers be permitted to rework mail that is not deemed in compliance with full-service requirements?

Postal Service Responses:

- Concerning mail quality errors, the Postal Service would allow adequate time for mailers to review and become familiar with mail data quality reporting and take corrective action.
- We are working with the mailing industry to define and develop a

seamless acceptance process that would leverage the data which is provided through full-service and eDoc.

▪ The Postal Service endeavors to streamline the acceptance and verification process.

▪ Until the Postal Service fully embraces a seamless environment, existing thresholds and policies would be maintained. Any changes to those thresholds would be defined collaboratively with the industry to mutually establish and refine policies.

▪ The Postal Service would continue to work with the industry to develop procedures and expect that monitoring would be provided through MicroStrategy reports designed specifically to provide mailers and the Postal Service with the necessary data to understand mail quality issues.

▪ The seamless concept would allow verification to be performed at points of induction through data captured from handheld scanners and mail processing equipment.

▪ Concerning the mailer's ability to rework mail, under seamless acceptance, data captured at induction and from mail processing equipment would be validated against eDoc and reported through seamless acceptance reporting.

Comment:

▪ To handle post list processing, this transition would cost mail houses additional funds in software upgrades. Currently, the mail house is able to change the postage statements after the job is produced (such as tray or sack counts) if what was used is different than what the qualification report requires. However, when full-service is implemented, unless mailers have post-processing software, we would not be able to change the Mail.dat file after the mail has been prepared. The Post Office should provide this post-processing capability.

Postal Service Response:

▪ The Postal Service is aware of the mailer's need to modify files after submission, and we have been working with industry representatives to identify options to make this available. A new functionality would be deployed to allow the mailer to delete a non-finalized job from the *PostalOne!* dashboard and resubmit the file without having to rename the file.

Comment:

▪ The switch to full-service is an onerous task that requires mailer service providers to submit a large amount of additional data. Also, it requires each of my customers to have their own CRID. Today, my customers come to me specifically, because they do not want to have to deal with the Post Office and all of the requirements that are in place to prepare a proper mailing. If mail owners are required to get involved with the process of applying for ID numbers and accounts with the Post Office, then you are reducing the value of the mail houses, which are your most valuable partners.

Postal Service Response:

▪ The Postal Service has several options for acquisition of CRIDS/MIDs in bulk by a mail service provider using an automated XML process or manual Excel-based request. Our RIBBS Web page has documents to assist in determining which option would be more suitable. A link to the page is provided below. Additionally, the Postal Service continues to explore options to simplify the use of full-service Intelligent Mail and evaluate the concerns of mailers. Visit our RIBBS Web page at *https://ribbs.usps.gov/index.cfm?page=intellmailmailidapp.*

Comment:

▪ The full-service Intelligent Mail TEM is a long, time-consuming process. I am significantly concerned about the effort and time commitment to transition to full-service, while still running my business.

Postal Service Response:

▪ The Postal Service has recently taken action to simplify the testing requirements for individual mailers. A process was developed to certify a vendor's software based on specific capabilities for which the software vendor has applied. The vision is for individual mailers/users of the certified software to collapse multiple submissions into a single submission to access the testing environment. Examination of the actual data submitted for the initial physical mailings would return feedback to the mailer on the verifications performed.

Requirements for Full-Service Intelligent Mail

Intelligent Mail Barcodes

• *Mailpiece barcode.* The IMb on letter and flat mailpieces encodes up to 31-digits of mailpiece data into 65 vertical bars. The IMb contains additional fields that encode ancillary services, identify the mailer and the class of mail, and allow unique numbering/serialization of the mailpiece. The Postal Service would issue a unique MID to each mailer using full-service Intelligent Mail, and the USPS-assigned MID must be included in the IMb. Except with simple mailings as described above in this notice, mailers are required to uniquely number each mailpiece in a mailing and not reuse any of the numbers for a period of 45 days from the date of mailing.

• *Tray barcode.* An IMtb is required on letter trays, flat trays and sacks. Unlike the 10-digit tray barcode containing only routing information that is used currently, the 24-digit IMtb includes additional fields to identify the mailer and uniquely number each tray, tub, or sack. The mailer's USPS-assigned MID must be included in the IMtb. Mailers are required to uniquely number each tray or sack in a mailing and not reuse any of the numbers for a period of 45 days from the date of mailing. Pieces inside each tray must be electronically linked or nested to the IMtb.

• *Container barcode.* An IMcb is required on all containers used to transport and enter mail at postal processing centers, such as pallets, all purpose containers (APCs), rolling stock, and gaylords, except certain small volume and FCM mailings. This 21-digit IMcb includes fields to identify the mailer and uniquely number each container. Mailers must include their USPS-assigned MID in the IMcb. Mailers are required to uniquely number each container in a mailing and not reuse any of the numbers for a period of 45 days from the date of mailing. Trays inside the container must be electronically linked or nested to the IMcb. When automation mailings are not required to be containerized (too small to require a pallet or rolling stock), an IMcb would not be required on placards nor would submission of IMcb records be required in eDoc.

Intelligent Mail Tray Barcodes

Starting in January 2014, when mailings are entered and full-service automation prices are claimed, the use of tray labels bearing 24-digit IMtb would be required. An IMtb contains the following information:

• *ZIP Code*™: A 5-digit ZIP Code used to identify the destination of the tray or sack.

• *Content Identifier Number (CIN):* Describes tray or sack content, including presort level and class.

• *Content Label Source (L SRC):* Designates whether tray, tub, or sack contents are automation compatible.

• *Mailer ID:* A 6- or 9-digit MID assigned by the Postal Service for use in the Intelligent Mail barcodes.

• *Serial Number:* A mailer would use this field to uniquely identify individual trays, tubs, or sacks. If a 6-digit MID is assigned, the mailer would have 8 digits to uniquely identify the handling units. If a 9-digit MID is assigned, the mailer would have 5 digits to identify the handling units. To participate in the

full-service option, the Serial Number field is populated with a unique number for each handling unit (tray or sack) in the mailing. For 45 days from the date of mailing, these serial numbers must remain unique.

• *Label Type:* Indicates MID field length.

To access automation prices through the full-service option, mailers would be required to populate all fields in the IMtb and include a unique serial number.

To view the final specifications and detailed information on the IMtb, access RIBBS at *http://ribbs.usps.gov/.*

Intelligent Mail Container Barcodes

Mailers typically label containers of mail deposited with the Postal Service. For full-service, mailers must apply a unique IMcb to container placards and keep the barcode unique for at least 45 days from the date of mailing. This IMcb includes fields to identify the mailer and uniquely identify each container. To comply with the full-service standards, mailers must apply placards to all containers such as pallets, APCs, rolling stock, and gaylords.

The IMcb has two formats. The format a mailer uses depends upon the MID assigned by the Postal Service.

The IMcb label specifications are available in two physical sizes for the IMcb barcode labels: One is the 8″ min x 11″ format available on RIBBS, and the other size is the 4″x7″ self adhesive format, also available on RIBBS.

• *Application ID (Appl ID):* ''99'' indicates the source of the barcode.

• *Type Indicator:* ''M'' indicates a mailer-generated barcode.

• *Mailer ID:* A 6- or 9-digit MID assigned by the Postal Service for use in the IMb.

• *Serial Number:* A mailer would use this field to uniquely identify individual containers. If a 6-digit MID is assigned, the mailer would have 12 digits to uniquely identify the containers. If a 9-digit MID is assigned, the mailer would have 9 digits to identify the containers. To participate in the full-service option, the serial number field is populated with a unique number for each container in the mailing. These unique serial numbers must not be reused for 45 days from the date of mailing. To access the automation prices through the full-service option, mailers would be required to populate all fields in the IMcb to include a unique serial number. To view the final specifications and detailed information on the IMcb, access RIBBS at *http://ribbs.usps.gov.*

Appointment Scheduling

All mailers whose mail is verified at a DMU/BMEU and transported by the mailer or their agent to a USPS processing facility, including mailings entered at origin and plant-verified drop shipments (PVDS), would be required to schedule appointments using the FAST system at postal facilities where applicable. Mailers may schedule appointments online using the FAST Web site or they may submit appointment requests through *PostalOne!* FAST Web Services using the Mail.XML specification. For improved service performance measurement, visibility, and operational planning, the Postal Service recommends that mailers link their IMcb to FAST appointments. Mailers must provide container barcodes as part of the stand-alone content creation, appointment creation, and update processes through *PostalOne!* FAST Web Services. Mailers can also receive close-out data through FAST online reports or *PostalOne!* FAST Web Services.

Electronic Documentation

By submitting documents electronically, mailers are able to manage mailing data more effectively and avoid the creation of paper-based forms. Additionally, submission of documents electronically enables the Postal Service to capture efficiencies.

When entering full-service mailings, eDoc is required. A mailer's eDoc identifies the unique IMb applied to each mailpiece, tray, tub, sack, and container; it describes how mailpieces are linked to handling units, such as trays, tubs, and sacks; and identifies how mailpieces and handling units are linked to containers. Additionally, eDoc identifies spoilage or shortage of pieces in a mailing, the preparer of the mailing, and the mailer for whom the mailing is prepared (i.e., Mail Owner). Mail Owner identification is required for all pieces in a full-service mailing.

The eDoc is transmitted to *PostalOne!* and used for verification, acceptance, payment, service performance measurement, and induction planning and processing. Also, *PostalOne!* can use this information to automate postage statement generation and payment processing. *PostalOne!* has the capability to provide mailers with access to their mailing documentation and financial transaction information 24 hours a day, 7 days a week. The *PostalOne!* system translates the customer-generated electronic information into postage statements and supporting documentation, such as qualification and container reports, which are used for verification, acceptance, and induction processes.

Mailings With Fewer Than 10,000 Pieces

Except mailings consisting of letter- and flat-size Periodicals and BPM flats, full-service mailings with fewer than 10,000 pieces do not require the submission of eDoc—only an electronic postage statement is required. These mailings may be electronically submitted using Postal Wizard, Mail.XML, or Mail.dat.

For mailings of fewer than 10,000 pieces, when postage is affixed to each piece at the correct price or each piece is of identical weight and the mailpieces are separated by price, the serial number field of each IMb can be populated with a mailing serial number that is unique to the mailing but common to all pieces in the mailing. This unique mailing serial number must not be reused for a period of 45 days from the date of mailing. Except mailers of full-service Periodicals letters and flats and BPM flats, mailers who enter such mailings are not required to submit eDoc for the full-service option, only an electronic postage statement. Unique mailing serial numbers must be populated in the Postal Wizard entry screen field or in the Mail.XML messages. Mailers must populate the serial number field of all Intelligent Mail tray or sack labels, and Intelligent Mail container barcodes (when mailings are containerized) with the unique mailing serial number. Postal Wizard cannot be used with full-service Periodicals and BPM mailings, even if under 10,000 pieces; Postal Wizard does not support adding the MID or the serial number(s) for these mailings. It should also be noted, for full-service mailings using the Postal Wizard, only the owner of the mailing permit will receive start-the-clock feedback.

Mailings With 10,000 Pieces or Greater

When full-service mailings with 10,000 pieces or greater are entered, mailers are required to use Mail.dat or Mail.XML to electronically transmit mailing documentation and postage statements. eDoc must contain information about the unique ID that is applied to the mailpieces, placards, trays, tubs, sacks, and containers. Also, the information must describe how mailpieces are linked to handling units and how mailpieces and handling units are linked to containers.

In addition, when mailings are co-palletized, co-mingled, or combined in-house or at a different plant, eDoc that outlines the linkage among associated

containers, trays, tubs, and sacks would be required.

Submitting eDoc

The three methods for submitting eDoc are described as follows:

Mail.dat: Mail.dat serves as a medium for electronic data exchange and is part of the overall *PostalOne!* application and provides customers the capability to electronically submit mailing documentation over a secure connection. Mail.dat uses industry-standard electronic file formats to facilitate communication. Mailing information is used to generate documentation to support verification, payment, and induction processes. Mail.dat specifications are available on RIBBS at *http://ribbs.usps.gov.*

Mail.XML: The Mail.XML is an overarching communication specification that allows mailers to communicate eDoc and manage appointments with the Postal Service, while enabling it to provide quality, address correction, induction, and visibility information back to mailers. Mail.XML can also be used to communicate between mailers and consolidators/transporters. Mail.XML is part of the overall *PostalOne!* application that enables a just-in-time connection (send information when you are ready to share). The Mail.XML Web Service uses a Simple Object Access Protocol (SOAP) to submit information in an Extensible Markup Language (XML) format that ensures data are sent and received by applications written in various languages and deployed on various platforms. Mailing information is sent through Mail.XML to the *PostalOne!* system where the information is stored and used to generate documentation to support verification and payment. Mail.XML specifications are available on RIBBS at *http://ribbs.usps.gov.*

Postal Wizard: The Postal Wizard is an online tool that allows mailers to securely enter their postage statement information using *PostalOne!* mailers may easily access Postal Wizard through the Business Customer Gateway at *https://gateway.usps.com.*

Postal Wizard verifies completed information for an online postage statement and automatically populates the permit holder section of the postage statement based on the account number provided. It guides the user through items needed to complete the statement. Postal Wizard automatically calculates postage and validates submitted information. Once a postage statement is completed online, the electronic statement is submitted directly to the acceptance unit.

For detailed information about electronic mailing options, access RIBBS at *http://ribbs.usps.gov.*

Additional Mailing Information Available With Full-Service

Information on mailpiece quality and visibility is available through the online USPS BCG tool and *PostalOne!* Web Services (Mail.XML). Mailers can query the information or obtain an automated subscription. As part of the full-service program, the Postal Service will be making the following information available: Container and tray induction and processing scans, IMb tracing bundle and piece scans; start-the-clock information; address correction data; and quality and documentation error reporting information.

Intelligent Mail Barcode Embedded Data:

- Full-service unique Intelligent Mail barcodes must be embedded with the following data: Barcode Identifier and OEL information (if printed on the mailpiece), Service Type Identifier (showing class of mail), Mailer Identifier, Unique Serial Number, and Delivery Point Routing Code (11-digit).
- *Barcode Identifier:* The barcode ID is a 2-digit field reserved to encode the presort identification printed in human-readable form on the Optional Endorsement Line (OEL). Should be left as ''00'' if an OEL is not printed on the mailpiece, except for automation-rate eligible flat mail with an optional endorsement line, where the IMb must contain OEL coding corresponding to the correct sortation level of each piece.
- *Service Type Identifier:* The service type identifier (STID) indicates class of mail and requested special services such as scan information or ACS.
- *Mailer Identifier:* The MID is a mandatory 6- or 9-digit identifier of the mail owner/mailing agent that is assigned by the Postal Service based upon documented historical mail volume of the owner/agent.
- *Serial Number:* The serial number is complementary with the MID for a combined total of 15 digits, which leaves the mailer/agent with 6 or 9 digits for unique mailpiece identification. A combination of the MID and serial number within a mail class must not be reused within 45 days of the mailing date.
- *Delivery Point Routing Code:* The delivery point routing code describes the 5-, 9-, or 11-digit field that identifies the delivery ZIP Code data in the address.

To view final specifications and detailed information on the IMb, access RIBBS at *http://ribbs.usps.gov.*

Although the USPS is exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be 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)

* * * * *

200 Commercial Letters and Cards

* * * * *

230 First-Class Mail

233 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Automation First-Class Mail Letters

5.1 Basic Standards for Automation First-Class Mail Letters

[Revise the introductory text of 5.1 as follows:]

All pieces in a First-Class Mail automation mailing must meet full-service standards in 705.24.0 and:

* * * * *

[Revise item 5.1e as follows:]

e. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 202.5.0 and 708.4.0, either on the piece or on an insert showing through a window.

* * * * *

[Delete current 5.2 in its entirety and renumber current 5.3 through 5.5 as new 5.2 through 5.4.]

* * * * *

240 Standard Mail

243 Prices and Eligibility

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Letters

6.1 General Enhanced Carrier Route Standards

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6.1.2 Basic Eligibility

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail mailing must:

* * * * *

[Revise item 6.1.2g as follows:]

g. Meet the requirements for automation letters in 201.3.0 and bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code matching the delivery address and meeting the standards in 202.5.0 and 708.4.0, except for letters with simplified addresses or as provided in 6.1.2h. Letters mailed at automation carrier route (basic, high density, or saturation) prices must be in a mailing entered under full-service Intelligent Mail standards in 705.24.0. Pieces prepared with a simplified address format are exempt from the full-service, automation-compatibility, and barcode requirements.

* * * * *

6.4 High Density Enhanced Carrier Route Standards

6.4.1 Additional Eligibility Standards for High Density Prices

[Revise the text of 6.4.1 as follows:]

In addition to the eligibility standards in 6.1, high density letter-size mailpieces must be in a full carrier route tray or in a carrier route bundle of 10 or more pieces prepared under 245.6.0. Except for pieces with a simplified address, only nonautomation high density letter prices apply when mailpieces are not: Barcoded with an Intelligent Mail barcode, automation-compatible, and part of a full-service mailing under 705.24.0.

* * * * *

6.5 Saturation ECR Standards

6.5.1 Additional Eligibility Standards for Saturation Prices

[Revise the text of 6.5.1 as follows:]

In addition to the eligibility standards in 6.1, saturation letter-size mailpieces must be in a full carrier route tray or in a carrier route bundle of 10 or more pieces prepared under 245.6.0. Except for pieces with a simplified address, only nonautomation saturation letter prices apply when mailpieces are not: barcoded with an Intelligent Mail barcode, automation-compatible, and part of a full-service mailing under 705.24.0.

* * * * *

7.0 Eligibility Standards for Automation Standard Mail

7.1 Basic Eligibility Standards for Automation Standard Mail

[*Revise the introductory text of 7.1 as follows:*]

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation mailing must meet full-service standards in 705.24.0 and:

* * * * *

[*Revise item 7.1e as follows:*]

e. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 202.5.0 and 708.4.0, either on the piece or on an insert showing through a window.

* * * * *

[*Delete current 7.2 in its entirety and renumber current 7.3 through 7.6 as new 7.2 through 7.5.*]

* * * * *

300 Commercial Flats

* * * * *

330 First-Class Mail

333 Prices and Eligibility

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5.0 Additional Eligibility Standards for Automation First-Class Mail Flats

5.1 Basic Standards for Automation First-Class Mail

[*Revise the introductory text of 5.1 as follows:*]

All pieces in a First-Class Mail automation flats mailing must meet full-service standards in 705.24.0 and:

* * * * *

[*Revise item 5.1e as follows:*]

e. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.5.0 and 708.4.0, either on the piece or on an insert showing through a window.

* * * * *

[*Delete current 5.2 in its entirety and renumber current 5.3 through 5.5 as new 5.2 through 5.4.*]

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

7.0 Additional Eligibility Standards for Automation Standard Mail Flats

7.1 Basic Eligibility Standards for Automation Standard Mail

[*Revise the introductory text of 7.1 as follows:*]

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation mailing must meet full-service standards in 705.24.0 and:

* * * * *

[*Revise item 7.1e as follows:*]

e. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.5.0 and 708.4.0, either on the piece or on an insert showing through a window.

* * * * *

[*Delete current 7.2 in its entirety and renumber current 7.3 through 7.4 as new 7.2 through 7.3.*]

* * * * *

360 Bound Printed Matter

363 Prices and Eligibility

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4.0 Price Eligibility for Bound Printed Matter Flats

4.1 Price Eligibility

* * * Price categories are as follows:

* * * * *

[*Revise item 4.1d as follows:*]

d. Barcoded Discount—Flats. The barcoded discount applies to BPM flats that meet the requirements for automation flats in 301.3.0 and bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code and are part of a full-service mailing under 705.24.0. See 6.1 for more information.

* * * * *

6.0 Additional Eligibility Standards for Barcoded Bound Printed Matter Flats

6.1 Basic Eligibility Standards for Barcoded Bound Printed Matter

[Revise the text of 6.1 as follows:]

The barcode discount applies only to BPM flat-size pieces meeting the standards under 301.3.0 and that bear a unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.5.0 and 708.4.0. The pieces must be part of a full-service nonpresorted mailing of 50 or more flat-size pieces or part of a full-service Presorted mailing of at least 300 BPM flats prepared under 365.7.0, 705.8.0, 705.14.0, and 705.24.0. The barcode discount is not available for

flats mailed at Presorted DDU prices or carrier route prices.

* * * * *

[Delete current 6.2 in its entirety and renumber current 6.3 through 6.4 as new 6.2 through 6.3.]

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

[Revise the title of 15.0 as follows:]

15.0 Intelligent Mail Barcode Tracing

* * * * *

15.1 Basic Information

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15.1.1 General Information

[Revise the text of 15.1.1 as follows:]

Participation in Intelligent Mail barcode (IMb) Tracing service is available at no charge without a subscription. Requirements for participation in IMb Tracing include: The use of an IMb on mailpieces entered as part of a full-service mailing under 705.24.0, the use of a Mailer Identifier that has been registered (through the Business Customer Gateway, accessible on *usps.com*) to receive scan data, and verification by the Postal Service that the IMb as printed meets all applicable postal standards.

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700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

* * * * *

[Revise the title of 24.0 as follows:]

24.0 Full-Service Automation Standards

24.1 Description

* * * *[Add a new last sentence at the end of the current text of 24.1 as follows:]*

Full-service automation mailings may include automation-compatible pieces without barcodes, with POSTNET barcodes, or with Intelligent Mail barcodes. Mailings of full-service automation letters must not be comingled in the same tray with automation-compatible pieces without barcodes, with POSTNET barcodes, or with non-full-service Intelligent Mail barcodes, and these pieces will not be used to meet the eligibility standards for full-service or receive associated benefits.

[Delete current 24.1.1 and 24.1.2 in their entirety.]

24.2 General Eligibility Standards

[Revise the introductory paragraph of 24.2 as follows:]

First-Class Mail, Periodicals, and Standard Mail letters and flats and Bound Printed Matter flats meeting eligibility requirements for automation or carrier route prices, except for Standard Mail ECR saturation flats or Standard Mail ECR letters paying nonautomation prices, are eligible for full-service automation prices. All pieces entered under the full-service automation pricing must:

* * * * *

[Revise item 24.2c as follows:]

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other containers prepared under 8.0 or as part of a customer/supplier agreement. Pallets or approved alternate containers, with unique Intelligent Mail container barcodes, also must be used whenever a mailing is entered at the dock of a USPS-processing facility and meets minimum container/pallet volume requirements. A customer/supplier agreement is authorized with a service agreement signed by the mailer, the USPS District Manager, Customer Service, and the USPS Processing and Distribution Center manager. The service agreement contains provisions regarding mailer and USPS responsibilities.

* * * * *

24.4 Preparation

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24.4.2 Intelligent Mail Tray Labels

* * * *[Revise the second sentence of 24.4.2 as follows:]*

Mailing documentation, when required, must associate each mailpiece to a corresponding tray or sack, or to a logical tray or sack, as described in 24.4.4.

* * * * *

24.4.3 Intelligent Mail Container Placards

* * * * *

[Revise the second sentence of 24.4.3 as follows:]

Mailing documentation, when required, must associate each mailpiece (and tray or sack, if applicable) to a corresponding container (or a logical container) as described in 24.4.4, unless otherwise authorized by the USPS.

* * * * *

24.4.4 eDoc

[Revise the text of 24.4.4 as follows:]

Mailers must electronically submit postage statements and mailing documentation to the *PostalOne!* system. Unless otherwise authorized, documentation must describe how each mailpiece is linked to a uniquely identified tray or sack and how each mailpiece and tray or sack is linked to a uniquely identified container. Linking to logical trays, sacks, and containers via sibling records is an option when linking to a specific tray, sack, or container is not feasible. The documentation also must meet the requirements in *A Guide to Intelligent Mail for Letters and Flats* (at *ribbs.usps.gov*). Mailers must transmit postage statements and documentation to the *PostalOne!* system using Mail.dat, Mail.XML, or Postal Wizard (see 24.5.3), except that mailers of Periodicals letters and flats and Bound Printed Matter flats must electronically submit postage statements and documentation in all instances.

* * * * *

707 Periodicals

* * * * *

14.0 Barcoded (Automation) Eligibility

14.1 Basic Standards

[Revise the introductory text of 14.1 as follows:]

All pieces in a Periodicals barcoded (automation) mailing must meet the full-service standards in 705.24.0 and:

* * * * *

[Revise the first sentence of item 14.1c as follows:]

c. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 202.5.0 (for letters), 302.4.0 (for flats), and 708.4.0, either on the piece or on an insert showing through a window.

* * * * *

14.2 Eligibility Standards for Full-Service Automation Periodicals

[Revise the introductory text of 14.2 as follows:]

All pieces entered under the full-service automation standards must:

* * * * *

[Revise item 14.2b as follows:]

b. Be part of a mailing that meets the standards in 705.24.0.

* * * * *

708 Technical Specifications

* * * * *

6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

6.1 General

6.1.1 Tray and Sack Labels

[Revise the text of 6.1.1 as follows:]

Intelligent Mail tray labels are the USPS-approved method to encode routing, content, origin, and mailer information on trays and sacks. Intelligent Mail tray labels are designed for optimum use with Intelligent Mail barcoded mail and have the capacity to provide unique identification throughout postal processing, but are required to be used on all trays and sacks in presorted mailings.

* * * * *

6.2 Specifications for Barcoded Tray and Sack Labels

* * * * *

6.2.2 Line 1 (Destination Line)

The destination line must meet these standards:

a. *Placement.* The destination line must be the top line of the label. An exception is that one line of extraneous information may appear above the destination line on tray and sack labels as provided in 6.3.2, and 6.3.2f. The destination line must be completely visible when placed in the label holder. This visibility is ensured if the destination line is no less than ⅛ (0.125) inch below the top of the label when the label is cut and prepared.

[Delete Exhibit 6.2.2a, Barcoded 2-inch Sack Labels, in its entirety.]

* * * * *

[Delete Exhibit 6.2.2b, Barcoded 1-inch Sack Labels, in its entirety.]

* * * * *

6.2.5 Line 3 (Origin Line)

[Revise the first sentence of 6.2.5 as follows:]

The origin line must appear below the content line, except as allowed under 6.3.4 and 6.2.5a and 6.2.5b. * * *

* * * * *

[Delete current 6.3, Additional Standards—Barcoded 2-Inch Sack Labels and Barcoded Tray Labels, and 6.4, Additional Standards—Barcoded 1-Inch Sack Labels, in their entirety.]

* * * * *

[Renumber current 6.5 as new 6.3 and revise the title as follows:]

6.3 Specific Standards for Intelligent Mail Tray Labels

6.3.1 Definitions

[Revise the text of renumbered 6.3.1 as follows:]

Intelligent Mail tray labels are 2-inch labels used on trays and sacks to provide unique identification within postal processing. 24-digit Intelligent Mail tray labels include only a 24 digit barcode printed in International Symbology Specification (ISS) Code 128 subset C symbology (see Exhibit 6.3.3). Intelligent Mail tray labels also include a human readable field designed to indicate the carrier route for carrier route mailings, display an ''AUTO'' indicator text for automation mailings, or remain blank for nonautomation mailings. Mailers using Intelligent Mail tray labels must print labels in the 24-digit Intelligent Mail tray label format. Detailed specifications for the tray label and barcode formats are at *http://ribbs.usps.gov.*

[Delete current Exhibit 6.5.1, 10/24 Transitional Intelligent Mail Tray Label, in its entirety.]

[Delete current 6.5.2, Transitional Intelligent Mail Tray Label Format, in its entirety.]

[Renumber current 6.5.3 through 6.5.7 as new 6.3.2 through 6.3.6.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–25551 Filed 10–16–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0754; FRL–9740–6]

Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories for the SMAQMD. We are proposing to approve these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATE: Any comments on this proposal must arrive by November 16, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0754, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: 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 *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 *www.regulations.gov* or email. *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 email directly to EPA, your email 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available 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: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following negative declarations listed in Table I:

TABLE 1—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
SMAQMD	Fiberglass Boat Manufacturing Materials (EPA–453/R–08–004, September 2008)	03/22/12	07/12/12
SMAQMD	Automobile and Light-Duty Truck Assembly Coatings (EPA–453/R–08–006, September 2008).	03/22/12	07/12/12

In the Rules and Regulations section of this **Federal Register**, we are approving these negative declarations in a direct final action without prior proposal because we believe these negative declarations are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 27, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–25381 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0202; FRL–9366–2]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on a Commodity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on the food commodity, wheat, grain.

DATES: Comments must be received on or before November 16, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0202, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Kathryn Montague, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–1243; email address: *montague.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments. When submitting comments, remember to:*

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the

population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), (21 U.S.C. 346a), requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on the food commodity, wheat, grain. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available online at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on the food commodity, wheat, grain. Further information on the petition may be obtained through the petition summary referenced in this unit.

EPA has received a pesticide petition (PP #1F7955) from Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.559 by amending the tolerances for residues of the herbicide, clodinafop-propargyl (propanoic acid, 2-[4-(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-,2-propynyl ester, (2R)-) and its acid metabolite (propanoic acid, 2-[4-[5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-, (2R)-), in or on the raw agricultural commodity wheat, grain from 0.1 parts per million (ppm) to 0.02 ppm.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 4, 2012.

Lois Rossi,

Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–25549 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

[Docket: CDC–2012–0010]

Influenza Viruses Containing the Hemagglutinin from the Goose/Guangdong/1/96 Lineage

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information and comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) announces the opening of a docket to obtain information and comments from the public to questions concerning highly pathogenic avian influenza (HPAI) H5N1 viruses that contain a hemagglutinin (HA) from the Goose/Guangdong/1/96 lineage, and their potential to pose a severe threat to public health and safety. This information will be considered in a determination of whether such viruses should be listed as HHS select agents, by revising the HHS Select Agent Regulations (42 CFR Part 73).

DATES: Electronic or written comments should be received on or before December 17, 2012.

ADDRESSES: You may submit comments identified by Docket Number CDC–2012–0010, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–46, Atlanta, Georgia 30333, Attn: Docket Number: CDC–2012–0010.

Instructions: All submissions received must include the agency name and docket number (CDC–2012–0010) for this notice. All relevant comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–46, Atlanta, Georgia 30333. Telephone: (404) 718–2000.

SUPPLEMENTARY INFORMATION:

I. Background

Since late 2003, the World Health Organization (WHO) has reported over 600 cases of human infection with highly pathogenic avian influenza (HPAI) H5N1 viruses with a mortality rate that exceeds 50 percent in hospitalized patients (Ref 1). Current epidemiologic evidence indicates that, once transmitted into a human host, H5N1 viruses may result in more severe disease in humans than other subtypes of influenza.

One important factor that can account for some of the increased pathogenicity is the hemagglutinin (HA) molecule. Cleavage of the HA molecule by host proteases (chemicals that can break amino acid bonds) enables influenza viruses to productively infect cells (i.e., replicate). For human influenza viruses, replication is restricted to the respiratory tract. However, HPAI H5N1 viruses contain a polybasic amino acid sequence in the HA molecule that is not found in human influenza viruses. This feature allows the molecule to be cleaved by a wider variety of proteases throughout the body and consequently, HPAI H5N1 viruses can replicate systemically in avian species.

Extrapulmonary dissemination of HPAI H5N1 virus has been documented among some fatal human HPAI H5N1 virus infections. The HA molecule mediates binding of the influenza virus to host cells in the respiratory tract. Human influenza viruses preferentially bind to different receptors than avian influenza viruses (Ref 2). While human influenza virus receptors are more prevalent in the upper respiratory tract, the receptors that bind avian viruses are present in the lower respiratory tract of humans. The ability of H5N1 viruses to bind and infect cells within the lung may contribute to the severity of H5N1 induced viral pneumonia (Ref 3–5). Furthermore, a change from avian- to human-type receptor-binding specificity, as seen with the pandemic strains of 1918 (H1N1), 1957 (H2N2),

and 1968 (H3N2), is thought to be a critical step in the adaptation of avian influenza viruses to humans and the ability to transmit efficiently among humans (Ref 6–8). In two recent independent studies (Ref 9 and Ref 10), investigators have shown that laboratory modified HPAI H5N1 influenza viruses with certain mutations can be transmitted via the respiratory route between ferrets. Ferrets are widely considered to provide the best animal model for exploring these aspects of influenza virus pathogenicity as they might relate to human infection (Ref 11).

We recognize that all HPAI H5N1 influenza virus clades found in humans to date have been derived from the Goose/Guangdong/1/96 lineage, and the HA molecule enables the virus to infect a host cell. Thus, we are interested in receiving information and comments on whether the influenza viruses that contain a hemagglutinin (HA) from the Goose/Guangdong/1/96 lineage have the potential to pose a severe threat to public health and safety (Ref 12). Currently, all HPAI H5 subtype viruses are regulated by the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) whose oversight focuses on the threat to animal health and safety. Listing influenza viruses that contain an HA from the goose/Guangdong/1/96 lineage as an HHS select agent will ensure that the focus of regulation will also be on the potential impact of these viruses on human health as well as agriculture. While USDA sets biosafety measures that may also be more generally beneficial to public health, its focus with respect to select agent designation is primarily on risks to agricultural animals, rather than direct effects on human health. There is precedence (e.g., *Bacillus anthracis*) for including agents that have both human and agricultural impacts on both the HHS and USDA Select Agent Lists. Designating HPAI containing an HA from the Goose/Guangdong/1/96 lineage an HHS select agent, in addition to its status as a USDA select agent, may help to ensure that HPAI strains that have the greatest potential for major direct effects on human health will be regulated with a focus on protection of human health.

The question of whether the influenza viruses that contain an HA from the Goose/Guangdong/1/96 lineage pose a severe threat to public health and safety was considered by HHS/CDC's Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC). The ISATTAC is comprised of Federal government scientists from HHS/CDC, the Biomedical Advanced Research and Development Authority (BARDA) within the Office of the Assistant Secretary for Preparedness and Response (HHS/ASPR) in HHS, the National Institutes of Health (HHS/NIH), the Food and Drug Administration (HHS/FDA), USDA/APHIS, the USDA/Agricultural Research Service, the USDA/Center for Veterinary Biologics, the Department of Homeland Security (DHS), and the Department of Defense (DOD). The criteria used by the ISATTAC in its review were the degree of pathogenicity, communicability, ease of dissemination, route of exposure, environmental stability, ease of production, ability to genetically manipulate or alter, long-term health effects, acute morbidity, acute mortality, available treatment, status of host immunity, vulnerability of special populations, and the burden or impact on the health care system. ISATTAC made the recommendation that the influenza viruses containing an HA from the Goose/Guangdong/1/96 lineage do have the potential to pose a severe threat to public health and safety. In making its recommendation to HHS/CDC, the ISATTAC considered both the historical data regarding the Goose/Guangdong/1/96 lineage and data from current *in vitro* and *in vivo* animal studies. The virulence of viruses of this lineage, the data showing transmissibility of genetically modified H5N1 viruses among ferrets, together with the fact that the level of immunity in the general population is low were all considered. Further, in its recommendation the ISATTAC voiced concern that an influenza pandemic caused by viruses containing an HA from the Goose/Guangdong/1/96 lineage, could potentially overwhelm the health care system. The ISATTAC also recognized that the study of the Goose/Guangdong/1/96 lineage-derived viruses could lead to significant public health benefits for understanding pandemic influenza, improved diagnostics, and the development of more effective countermeasures. Therefore, the risks posed by these viruses need to be weighed against any adverse impact that a regulation will have on legitimate research.

On July 2, 2010, the President signed Executive Order 13546, ''Optimizing the Security of Biological Select Agents and Toxins in the United States'' that directed the Secretaries of HHS and USDA to designate a subset of the select agents and toxins list (Tier 1) that presents the greatest risk of deliberate misuse with the most significant potential for mass casualties or devastating effects to the economy, critical infrastructure, or public confidence. The Executive Order 13546 also established the Federal Experts Security Advisory Panel (FESAP) to advise the HHS and USDA Secretaries on the designation of Tier 1 agents and toxins. In December of 2010, the FESAP provided the HHS and USDA Select Agent regulatory programs with recommendations on updating the HHS and USDA Select Agent and Toxin lists, including a subset of agents and toxins recommended for Tier 1 designation.

On October 3, 2011, HHS/CDC published a notice of proposed rulemaking (76 FR 61206) in which we proposed a list of select agents and toxins that should be considered Tier 1 select agents and toxins. The proposed Tier 1 agents and toxins that were based on Executive Order 13546 and the recommendations from FESAP were scored against 20 criteria by over 60 Subject Matter Experts representing the Federal life sciences, public health, law enforcement, security, and intelligence communities. The criteria included:

- The relative ease with which a particular select agent or toxin might be disseminated or transmitted from one human to another or into the environment where it could produce a deleterious effect upon human health;
- The potential for a high mortality rate;
- The potential for a major human health impact;
- Select agents or toxins whose misuse might result in public panic or other social or economic disruption; and
- Select agents or toxins whose use might require Federal, State, and/or local officials to take special action in planning for major human health disasters.

We proposed that the following agents should be designated as Tier 1 agents: *Bacillus anthracis,* Botulinum neurotoxin, Botulinum neurotoxin producing species of *Clostridium, Burkholderia mallei, B. pseudomallei, Francisella tularensis,* Marburg virus, Variola major virus, Variola minor virus, and *Yersinia pestis*. On the same day, USDA/APHIS published a companion rule in the **Federal Register** proposing its list of select agents and toxins that should be considered Tier 1 select agents and toxins. Although USDA/APHIS regulates HPAI viruses as select agents, they did not propose to designate HPAI viruses as Tier 1 select agents. Given the above criteria used by the FESAP, we would welcome comment on whether HPAI H5N1 influenza viruses containing the HA from the Goose/Guangdong/1/96 lineage should be listed as a Tier 1 select agent. The final determination of whether or not to designate this particular lineage

of H5N1 HPAI as Tier 1 would be a collaborative process between HHS and USDA. HHS and USDA would continue to work closely together whether or not both HHS and USDA designate these viruses as Tier 1 Select Agents.

II. Establishment of a Docket and Request for Specific Input on Certain Topics

We are establishing a docket to provide an opportunity for interested persons to submit comments, research data, and other information that will better inform us about the risk posed by HPAI H5N1 influenza viruses containing the HA from the Goose/Guangdong/1/96 lineage to public health and safety. In particular, we welcome comment on the following questions:

(1) Do HPAI H5N1 influenza viruses containing the HA from the Goose/Guangdong/1/96 lineage pose a severe threat to public health and safety?

(2) Are there other influenza strains containing HA from Goose/Guangdong/1/96 lineage that would also pose a severe threat even if they were not fully of HPAI H5N1 origin?

(3) Are there any other HPAI H5N1 influenza strains that have been identified to pose a severe threat to public health and safety?

(4) Should these viruses be regulated as HHS select agents?

(5) If these viruses should be regulated as HHS select agents, should these viruses be designated as Tier 1 select agents?

(6) Should special precautions (i.e., safety and containment measures) be considered when working with diagnostic specimens suspected of containing HPAI H5N1 influenza viruses containing the HA from the Goose/Guangdong/1/96 lineage (i.e., any precautions versus none at all, precautions beyond those usual for clinical samples and/or laboratory microbes, etc.)? and

(7) Should special precautions (i.e., safety and containment measures) be considered when working with strains of HPAI containing the HA from the Goose/Guangdong/1/96 lineage that have been shown to be transmissible between mammals beyond those recommended for non-mammalian transmissible HPAI (Ref 13 and Ref 14)?

III. References

1. WHO, Cumulative number of confirmed human cases for avian influenza A(H5N1) reported to WHO, 2003–2011; *http://www.who.int/influenza/human_animal_interface/H5N1_cumulative_table_archives/en/index.html.*
2. Fukuyama S, Kawaoka Y. The pathogenesis of influenza virus infections: The contributions of virus and host factors. Curr Opin Immunol. 2011 Aug;23(4):481–6. Epub 2011 Aug 11.
3. Shinya K, Ebina M, Yamada S, Ono M, Kasai N, Kawaoka Y. Avian flu: Influenza virus receptors in the human airway. Nature. 2006 Mar 23;440(7083):435–6.
4. Nicholls JM, Chan MC, Chan WY, Wong HK, Cheung CY, Kwong DL, Wong MP, Chui WH, Poon LL, Tsao SW., Guan Y, Peiris JS. Tropism of avian influenza A (H5N1) in the upper and lower respiratory tract. Nat Med. 2007 Feb;13(2):147–9. Epub 2007 Jan 7.
5. Van Riel D, Munster VJ, de Wit E, Rimmelzwaan GF, Fouchier RA, Osterhaus AD, Kuiken T. H5N1 Virus Attachment to Lower Respiratory Tract. Science. 2006 Apr 21;312(5772):399. Epub 2006 Mar 23.
6. Matrosovich, M., et al. Early alterations of the receptor-binding properties of H1, H2, and H3 avian influenza virus hemagglutinins after their introduction into mammals. J Virol 74, 8502–8512 (2000).
7. Stevens, J., et al. Glycan microarray analysis of the hemagglutinins from modern and pandemic influenza viruses reveals different receptor specificities. J Mol Biol 355, 1143–1155 (2006).
8. Connor, R.J., Kawaoka, Y., Webster, R.G. & Paulson, J.C. Receptor specificity in human, avian, and equine H2 and H3 influenza virus isolates. Virology 205, 17–23 (1994).
9. Masaki Imai,1 Tokiko Watanabe,1, 2 Masato Hatta,1 Subash C. Das,1 Makoto Ozawa,1, 3 Kyoko Shinya,4 Gongxun Zhong,1 Anthony Hanson,1 Hiroaki Katsura,5 Shinji Watanabe,1, 2 Chengjun Li,1 Eiryo Kawakami,2 Shinya Yamada,5 Maki Kiso,5 Yasuo Suzuki,6 Eileen A. Maher,1 Gabriele Neumann1 & Yoshihiro Kawaoka. Experimental adaptation of an influenza H5 HA confers respiratory droplet transmission to a reassortant H5 HA/H1N1 virus in ferrets. Nature. 2012 May 2;486(7403):420–8.
10. Russell CA, Fonville JM, Brown AE, Burke DF, Smith DL, James SL, Herfst S, van Boheemen S, Linster M, Schrauwen EJ, Katzelnick L, Mosterín A, Kuiken T, Maher E, Neumann G, Osterhaus AD, Kawaoka Y, Fouchier RA, Smith DJ. The potential for respiratory droplet-transmissible A/H5N1 influenza virus to evolve in a mammalian host. Science. 2012 Jun 22; 336(6088):1541–7.
11. Belser JA, Szretter KJ, Katz JM, Tumpey TM. Use of animal models to understand the pandemic potential of highly pathogenic avian influenza viruses. Adv Virus Res. 2009;73:55–97.
12. WHO/OIE/FAO H5N1 Evolution Working Group. Continued evolution of highly pathogenic avian influenza A (H5N1): updated nomenclature. Influenza Other Respi Viruses. 2012 Jan; 6(1): 1–5. doi: 10.1111/j.1750–2659.2011.00298.x. Epub 2011 Oct 29.
13. *Guidelines for Avian Influenza Viruses* (*http://www.selectagents.gov/resources/Guidelines%20for%20Avian%20Influenza%20Viruses_2011-11-4.pdf*).
14. *Biosafety in Microbiological and Biomedical Laboratories (http://www.cdc.gov/biosafety/publications/bmbl5/index.htm).*

Dated: October 9, 2012.

Kathleen Sibelius,

Secretary.

[FR Doc. 2012–25377 Filed 10–16–12; 8:45 am]

BILLING CODE 4163–18–P

Notices

Federal Register

Vol. 77, No. 201

Wednesday, October 17, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With Final Results of Administrative Review, Notice of Re-conduct of Administrative Review of Grobest & I Mei Industrial (Vietnam) Co., Ltd., and Notice of Amended Final Results of Administrative Review

SUMMARY: On September 13, 2012, the United States Court of International Trade (''CIT'' or ''Court'') entered final judgment following its decision in *Grobest II,*[1] regarding the final results of the antidumping duty administrative review of certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'') for the period covering February 1, 2008, through January 31, 2009.[2] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken,*[3] as clarified by *Diamond Sawblades,*[4] the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* and is amending the *Final Results.* The Department is also notifying the public that it is re-conducting the 2008/2009 antidumping duty administrative review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (''Grobest'') pursuant to the CIT's order.

DATES: *Effective Date:* September 23, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION: On August 9, 2010, the Department issued its *Final Results.* In the *Final Results,* the Department determined not to examine Grobest as a voluntary respondent and rejected Amanda Foods (Vietnam) Ltd.'s (''Amanda Foods'') untimely separate rate certification (''SRC'').[5]

In *Grobest I,* the CIT remanded the *Final Results* to the Department to, *inter alia,* reconsider its denial of Grobest's voluntary respondent request and to accept Amanda Foods' SRC.[6] On April 30, 2012, the Department filed its remand results, in which it determined that individually reviewing Grobest as a voluntary respondent would have been unduly burdensome and would have inhibited the timely completion of the administrative review. The Department also accepted Amanda Foods' SRC, per the Court's instruction.

On July 31, 2012, the Court sustained the Department's remand results regarding Amanda Foods' SRC, but remanded the Department's rejection of Grobest's request for voluntary respondent status and ordered the Department to conduct an individual review of Grobest as a voluntary respondent and to reconsider Grobest's revocation request in light of the results of that review.[7]

Following the Court's remand order in *Grobest II,* the Government moved the Court to enter final judgment so that the Department could re-conduct the administrative review of Grobest under section 751(a)(3) of the Tariff Act of 1930, as amended. The Court granted this motion and ordered the Department to re-conduct the administrative review of Grobest by individually investigating Grobest as a voluntary respondent and reconsidering Grobest's request for revocation in light of the results of that review. The Court also ordered the Department to treat the review of Grobest as being conducted pursuant to the deadlines listed in section 751(a)(3) of the Act, calculating the deadlines beginning from the date of the entry of final judgment.

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's September 13, 2012, judgment sustaining the Department's remand redetermination to accept Amanda Foods' SRC and remand to individually review Grobest constitutes a final decision of that court that is not in harmony with the Department' *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Notice of Re-Conduct of Review of Grobest

Pursuant to the Court's final judgment, the Department will re-conduct the 2008/2009 administrative review of the antidumping duty order on shrimp from Vietnam on Grobest. The Department will conduct the administrative review according to the deadlines listed in Section 751(a)(3) of the Act, calculating the deadlines beginning from the date the final judgment was entered, *i.e.,* September 13, 2012. The Department will also reconsider Grobest's request for revocation within the context of that review.

Amended Final Results

Because there is now a final court decision with respect to the *Final Results,* the Department amends its

[1] *See Grobest & I-Mei Industrial (Vietnam) Co.* v. *United States,* Slip Op. 2012–100 (July 31, 2012) (''*Grobest II*'').

[2] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 47771 (August 9, 2010), and accompanying Issues and Decision Memorandum, as amended by *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review,* 75 FR 61122 (October 4,2010) (''*Final Results*'').

[3] *See Timken Co.,* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*'').

[4] *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*'').

[5] *See Final Results.*

[6] *See Grobest & I-Mei Industrial (Vietnam) Co.* v. *United States,* 36 CIT, 2d 1342 (2012) (''*Grobest I*'').

[7] *See Grobest II.*

[8] *See Timken, 893 F.2d at 341.*

Final Results. The Department finds the following revised margin to exist:

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Exporter	Margin (percent)
Amanda Foods (Vietnam) Ltd.	3.92

The Department also amends the *Final Results* by announcing that it is re-conducting the administrative review of Grobest, pursuant to the Court's September 13, 2012, order.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: October 10, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–25579 Filed 10–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Pure Magnesium in Granular Form from the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') order on pure magnesium in granular form from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping, or to a continuation or recurrence of material injury within a reasonably foreseeable time to an industry in the United States, the Department is publishing this notice of continuation of the AD order.

DATES: *Effective Date:* October 17, 2012.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Eugene Degnan, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION: On February 1, 2012, the Department initiated the second sunset review of the AD order on pure magnesium in granular form from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1]

The Department conducted an expedited sunset review of the order. As a result of its review, the Department determined that revocation of the AD order on pure magnesium in granular form from the PRC would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2]

On October 1, 2012, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the AD order on pure magnesium in granular form from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

There is an existing AD order on pure magnesium from the PRC.[4] The scope of this order excludes pure magnesium that is already covered by the existing order on pure magnesium in ingot form, and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy''[5] (generally referred to as ''off specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al2O3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.[6]

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the AD order on pure magnesium in granular form would likely lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD order on pure magnesium in granular form from the PRC.

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 4995 (February 1, 2012) (''*Initiation Notice*'').

[2] *See Pure Magnesium in Granular Form from the People's Republic of China: Final Results of Expedited Second Sunset Review of Antidumping Duty Order,* 77 FR 33165 (June 5, 2012).

[3] *See Pure Magnesium (Granular) from China* (Inv. No. 731–TA–895 (Second Review)), 77 FR 59979 (October 1, 2012).

[4] *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995).

[5] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[6] The Department has issued four scope rulings with respect to pure magnesium in granular form. *See Notice of Scope Rulings and Anticircumvention Inquiries,* 68 FR 7772, 7774 (February 18, 2003); Memorandum to the File ''Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling: ESM Group Inc.,'' dated September 18, 2006; Memorandum to Christian Marsh, ''Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling on Granular Magnesium Ground in Mexico,'' dated October 27, 2011; Memorandum to Christian Marsh, ''Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling for ESM Group Inc. (Atomized Magnesium),'' dated October 28, 2011.

U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: October 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–25456 Filed 10–16–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (PRC). The Department further determines that there have been massive imports of subject merchandise over a relatively short period of time by, and therefore critical circumstances do exist.[1] For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* October 17, 2012.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, Jun Jack Zhao, or Emily Halle, 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) 482–3586, (202) 482–1396, or (202) 482–0176, respectively.

[1] *See* ''Critical Circumstances'' below.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is Solar World Industries, America, Inc. (Petitioner). This investigation covers 31 government programs. In addition to the Government of the PRC (GOC), the mandatory respondents in this investigation are: (1) Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliated company Trina Solar (Changzhou) Science and Technology Co., Ltd. (collectively, Trina Solar); and (2) Wuxi Suntech Power Co., Ltd. and its cross-owned affiliated companies Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd., Yangzhou Rietech Renewal Energy Co., Ltd., Zhenjiang Huantai Silicon Science & Technology Co., Ltd., Kuttler Automation Systems (Suzhou) Co., Ltd., Shenzhen Suntech Power Co., Ltd., Wuxi Sunshine Power Co., Ltd., Wuxi University Science Park International Incubator Co., Ltd., Yangzhou Suntech Power Co., Ltd., and Zhenjiang Rietech New Energy Science & Technology Co., Ltd. (collectively, Wuxi Suntech, unless otherwise indicated).

Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

Case History

The events that have occurred since the Department published the *Preliminary Determination*[2] on March 26, 2012, are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China (Decision Memorandum).[3]

Scope Comments

The scope-related comments submitted by parties in the companion antidumping duty investigation in their case and rebuttal briefs covered the same scope arguments and issues that were submitted in the case and rebuttal briefs in this investigation. Petitioner, the GOC, Trina Solar, Wuxi Suntech, Small Steps Solar, Ltd., and SunPower Corporation provided comments on the scope of the investigations and the merchandise that is to be included in the scope.

Scope of Investigation

The merchandise covered by this investigation are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. *See* Appendix I for a complete description of the scope of this investigation.

Critical Circumstances

In the *Preliminary Critical Circumstances Determination,*[4] the Department concluded that critical circumstances exist with respect to imports of solar cells from the PRC for Wuxi Suntech, Trina Solar, and all other producers or exporters, in accordance with section 703(e)(1) of the Tariff Act of 1930, as amended (Act). Our analysis of the comments submitted by interested parties has not led us to change our findings from the *Preliminary Critical Circumstances Determination.* For a complete discussion that reflects the Department's decisions regarding critical circumstances, *see* the Decision Memorandum. Therefore, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect to imports from Wuxi Suntech, Trina Solar and all other producers or exporters of solar cells from the PRC, and we will continue to maintain the suspension of liquidation of imports that entered the United States 90 days before the date of publication of the *Preliminary Determination,* unless the U.S. International Trade Commission (ITC) determines that critical circumstances do not exist.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 17439 (March 26, 2012) (*Preliminary Determination*).

[3] Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

[4] *See Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Determination of Critical Circumstances,* 77 FR 5487 (February 3, 2012) (*Preliminary Critical Circumstances Determination*).

the case and rebuttal briefs by parties in this investigation are discussed in the Decision Memorandum, which is hereby adopted by this notice. A list of the subsidy programs and the issues that parties raised and to which we responded in the Decision Memorandum is attached to this notice as Appendix II. The Decision Memorandum is a public document and is on file electronically via IA ACCESS. IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the CRU, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, we have continued to rely on facts available and have continued to apply adverse inferences in accordance with sections 776(a) and (b) of the Act with regard to: (1) Whether the polysilicon producers at issue are ''authorities'' that provide polysilicon for less than adequate remuneration (LTAR); (2) whether the provision of polysilicon is specific in accordance with section 771(5A) of the Act; (3) whether the land provided to Trina Solar is countervailable; (4) whether the grants discovered during the course of this investigation are countervailable; and (5) the GOC's provision of electricity for LTAR. In addition, for the purposes of this final determination, we are also applying adverse facts available (AFA) to (1) find the export buyer's credit program to be used and countervailable, and to determine the countervailing duty (CVD) rate to be applied for the export buyer's credit program, and (2) determine that certain land provided to Wuxi Suntech is countervailable. A full discussion of our decision to apply AFA is presented in the Decision Memorandum under the section ''Use of Facts Otherwise Available and Adverse Inferences.''

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated a rate for each individually investigated producer/exporter of the subject merchandise. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an ''all-others'' rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all others'' rate by weight averaging the rates of Trina Solar and Wuxi Suntech, because doing so risks disclosure of proprietary information. Therefore, we have calculated an average rate using other information on the record.[5] Since both Trina Solar and Wuxi Suntech received countervailable export subsidies and the ''all others'' rate is an average based on the individually investigated exporters and producers, the ''all others'' rate includes export subsidies.

We determine the total countervailable subsidy rates to be as follows.

Company	Subsidy rate
Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd. (collectively, Trina Solar).	15.97 percent *ad valorem*.
Wuxi Suntech Power Co., Ltd., Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd., Yangzhou Rietech Renewal Energy Co., Ltd., Zhenjiang Huantai Silicon Science & Technology Co., Ltd., Kuttler Automation Systems (Suzhou) Co., Ltd., Shenzhen Suntech Power Co., Ltd., Wuxi Sunshine Power Co., Ltd., Wuxi University Science Park International Incubator Co., Ltd., Yangzhou Suntech Power Co., Ltd., and Zhenjiang Rietech New Energy Science & Technology Co., Ltd (collectively, Wuxi Suntech).	14.78 percent *ad valorem*.
All Others Rate	15.24 percent *ad valorem*.

As a result of our *Preliminary Critical Circumstances Determination* and our *Preliminary Determination* and pursuant to section 703(e)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption on or after December 27, 2011, the date 90 days prior to the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after July 24, 2012, but to continue the suspension of liquidation of all entries from December 27, 2011, through July 23, 2012.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, exists, but that critical circumstances do not exist, the Department will order the refund of all cash deposits and the cancellation of all securities posted from December 27, 2011, to March 26, 2012. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) 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 related 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 (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder

[5] *See* Memorandum to the File from Emily Halle, ''Calculation of the All-Others Rate,'' dated October 9, 2012, providing the precise calculation relying on public information.

to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: October 9, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000 mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this investigation; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000.[6] These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

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[6] CBP provided notification that HTSUS number 8501.31.8000 should be added to the scope of the investigation, as certain articles under this number may fall within the scope. *See* Memorandum from Gene H. Calvert through Mark Hoadley to the File, ''ACE Case Reference File Update,'' dated May 16, 2012.

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[FR Doc. 2012–25564 Filed 10–16–12; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: Effective Date: October 17, 2012.

SUMMARY: On May 25, 2012, the Department of Commerce (''Department'') published its preliminary determination of sales at less than fair value (''LTFV''), postponement of final determination and affirmative preliminary determination of critical circumstances in the antidumping investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules (''solar cells''), from the People's Republic of China (''PRC'').[1] On June 25, 2012, the Department published its *Preliminary Determination Correction* in this antidumping investigation.[2] The Department invited interested parties to comment on the *Preliminary Determination.* Based on the Department's analysis of the comments received, the Department has made changes from the *Preliminary Determination.* The Department determines that solar cells from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The final dumping margins for this investigation are listed in the ''Final Determination'' section below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen, Krisha Hill, or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769, (202) 482–4037, or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published its *Preliminary Determination* on May 25, 2012.[3] On May 22 and 25, 2012, Delsolar Co., Ltd./DelSolar (Wujiang) Ltd. and JinkoSolar International Limited, respectively submitted requests that the Department correct errors in their company names that appeared in the *Preliminary Determination.*[4] The Department made the requested corrections and published its *Preliminary Determination Correction* notice on June 25, 2012.

Between May 28, 2012 and June 25, 2012, the Department conducted verifications of the mandatory respondents Wuxi Suntech Power Co. Ltd., Suntech America, Inc., Suntech Arizona, Inc. (collectively, ''Wuxi Suntech''), Changzhou Trina Solar Energy Co., Ltd. (''Trina''), and certain of their affiliates.[5]

Between July 9, 2012, and July 26, 2012, Wuxi Suntech, Trina, and Petitioner submitted surrogate value and rebuttal surrogate value comments.

On July 24, 2012, and July 23, 2012, respectively, Wuxi Suntech and Trina submitted revised U.S. sales and FOP databases per the Department's request to provide updated databases reflecting the results of verification.

On July 30, 2012, Wuxi Suntech Power Co., Ltd., Trina, SolarWorld Industries America, Inc. (''Petitioner''), Yingli Green Energy Holding Company Limited and Yingli Green Energy Americas, Inc. (collectively, ''Yingli''), Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. (''Jiasheng''), Shanghai Chaori Solar Energy Science & Technology Co., Ltd. and Shanghai Chaori International Trading Corporation Ltd. (collectively, ''Chaori''), and the Government of China (''GOC'') submitted case briefs. On July 31, 2012, Small Steps Solar, Ltd. submitted a case brief, which the Department rejected because it was untimely filed.[6] Subsequently, the Department rejected Yingli's case brief because it contained certain new factual information.[7] Yingli resubmitted its redacted case brief on August 3, 2012.[8] On August 6, 2012, Wuxi Suntech Power Co., Ltd., Trina, Petitioner, tenKsolar (Shanghai) Co., Ltd. and tenKsolar, Inc. (collectively ''tenKsolar''), SunPower Corporation, and Sumec Hardware & Tools Co., Ltd. *et al.*[9] submitted rebuttal briefs. Further,

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances,*77 FR 31309 (May 25, 2012) (''*Preliminary Determination''*).

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination Correction,* 77 FR 37877 (June 25, 2012) (''*Preliminary Determination Correction''*).

[3] *See Preliminary Determination.*

[4] *See* Letter from JinkoSolar International Limited to the Department regarding, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Ministerial Error in Preliminary Determination,'' dated May 25, 2012. *See also* Letter from DelSolar Co., Ltd. and DelSolar (Wujiang) Ltd. to the Department regarding, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Request for Correction,'' dated May 22, 2012.

[5] *See* the ''Verification'' section below.

[6] *See* Letter from the Department to Small Steps Solar, Ltd., regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Small Steps Solar, Ltd.'s July 31, 2012 Submission,'' dated August 3, 2012.

[7] *See* Letter from the Department to Yingli, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: July 30, 2012 Case Brief of Yingli Green Energy Holding Company Limited and Yingli Green Energy Americas, Inc.,'' dated August 2, 2012.

[8] *See* Letter from Yingli to the Department, regarding ''Crystalline Silicon Photovoltaic Celis, Whether or Not Assembled into Modules, from the People's Republic of China: Resubmission of Yingli's Case Brief,'' dated August 3, 2012.

[9] The following separate rate companies jointly submitted a rebuttal brief: Sumec Hardware & Tools Co., Ltd., Ningbo Etdz Holdings Ltd., LDK Solar Hi-Tech (Nanchang) Co., Ltd., LDK Solar Hi-Tech

Continued

Wuxi Suntech, Trina Solar and Trina Solar (U.S.), Inc., and Yingli jointly submitted a rebuttal brief on August 6, 2012.

On June 25, 2012, Wuxi Suntech, Trina, Petitioner, and Yingli requested a hearing. Based on these hearing requests, on August 14, 2012, the Department held a public hearing limited to issues raised in case briefs and rebuttal briefs.

On September 7, 2012, Petitioner requested that the Department re-open the record to consider new recently available public information which indicates that Wuxi Suntech submitted potentially fraudulent financial statements to the Department.[10] On September 11, 2012, the Department reopened the record for parties to comment on Petitioner's allegation of fraud. On September 14, 2012 and September 18, 2012, Wuxi Suntech and Petitioner filed comments and rebuttal comments, respectively, regarding the fraud issue raised by Petitioner.

Period of Investigation

The period of investigation (''POI'') is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was October 2012.[11]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation, as well as comments received pursuant to the Department's requests are addressed in the Issues and Decisions Memorandum. A list of the issues which the parties raised and to which the Department responded in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Changes Applicable to Multiple Companies

- Updated surrogate values for certain direct materials.
- Used an additional financial statement to calculate surrogate financial ratios.

Changes Specific to Wuxi Suntech

- Excluded all purchases of inputs from suppliers located in South Korea from the calculation of Wuxi Suntech's weighted-average market economy purchase prices.
- Accepted the minor corrections submitted by Wuxi Suntech at verification and calculated its final margin using the revised sales and FOP databases that reflect these minor corrections.
- Adjusted Wuxi Suntech's claimed offset for broken wafers based on verification findings.
- Adjusted cell consumption based on verification findings.
- Valued two additional FOP based on verification findings and post-preliminary submissions.
- Excluded two FOP based on a determination that these inputs are properly classified as overhead items.
- Treated certain silicon wafers reportedly obtained from tollers as silicon wafer purchases.
- Classified Wuxi Suntech's recycled silicon input as a direct material and its recycled silicon byproduct as an offset.
- Excluded certain transactions from the final margin calculations.
- Revised Wuxi Suntech's indirect selling expenses and applied them to a price that is net of certain adjustments.
- Revised warranty expenses.
- Revised the net price calculation based on verification findings to account for additional expenses and revenue items.
- Revised the unit-of-measure conversion factor used to value one input based on verification findings.
- Uncapped certain per-unit expense amounts.
- Found that critical circumstances do not exist with respect to Wuxi Suntech.

Changes Specific to Trina

- Calculated Trina's dumping margin using the invoice or rated quantity in watts rather than the maximum rated quantity in watts.
- Updated warranty expenses, rebates, and other minor corrections based on verification findings.
- Valued Trina's back sheets using Thai imports under the HTS categories that correspond to the primary materials which comprise the back sheet.
- Excluded two inputs that would be classified as overhead in the calculation of surrogate financial ratios.
- Did not apply the *Sigma cap* to certain suppliers' distances where the surrogates used to value the input are not based on import statistics.
- Updated the surrogate values for ocean freight and applied them to all sales on which Trina paid ocean freight.

For detailed information concerning all of the changes made, including those listed above, see the company-specific analysis and surrogate value memoranda.

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

(Suzhou) Co., Ltd., Ningbo Qixin Solar Electrical Appliance Co., Ltd., Ningbo Komaes Solar Technology Co., Ltd., Zhejiang Jiutai New Energy Co., Ltd., ET Solar Industry Limited, JingAo Solar Co., Ltd., Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Jiangsu Sunlink PV Technology Co., Ltd., and JA Solar Technology Yangzhou Co., Ltd.

[10] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Phototovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request to Reopen the Records to New Factual Information,'' dated September 7, 2012.

[11] *See* 19 CFR 351.204(b)(1).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this investigation; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000.[12] These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Scope Comments

The Department received comments regarding the scope of the investigation from a number of interested parties. After analyzing the comments, the Department has made no changes to the scope of this investigation. For a complete discussion of scope issues, *see* the Issues and Decision Memorandum at Comment 1.

Critical Circumstances

In the *Preliminary Determination,* we determined that critical circumstances exist for Wuxi Suntech, Trina, the separate rate respondents, and the PRC-wide entity, based on two comparisons. We examined two comparison periods starting either September 2011 or October 2011 based on imputing knowledge that a proceeding was likely in either early or late September 2011. Due to data availability in the *Preliminary Determination* we ended both comparison periods in March 2012. Specifically, we compared imports during a base period of February 2011 through August 2011 to imports from September 2011 through March 2012, and imports during a base period of April 2011 through September 2011 to imports from October 2011 through March 2012. For the final determination we have shipment data for both Wuxi Suntech and Trina for April 2012 and May 2012. Based on our practice, we have included data in our comparison period through the month of the *Preliminary Determination,* May 2012. For the final determination, we have determined that critical circumstances do not exist for Wuxi Suntech. However, critical circumstances continue to exist for Trina, the separate rate respondents, and the PRC-wide entity. For a complete discussion of critical circumstances issues *see* the Issues and Decision Memorandum at Comment 10.

Targeted Dumping

The statute allows the Department to employ an alternative dumping margin calculation methodology in an AD investigation under the following circumstances: (1) There is a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodology.[13] On February 13, 2012, Petitioner alleged targeted dumping with respect to Wuxi Suntech's [14] and Trina's [15] sales to certain U.S. customers and regions, and in certain time periods. In order to determine whether the respondents engaged in targeted dumping, the Department conducted a targeted dumping analysis established in *Steel Nails.*[16] The methodology employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement.[17] We made all price comparisons in the test using prices for comparable merchandise (*i.e.,* by control number or CONNUM). The test procedures are the same for targeted-dumping allegations involving customers, regions, and time periods. We based all of our targeted-dumping calculations on the net U.S. price that we determined for U.S. sales by Wuxi Suntech and Trina in our margin calculations.

As a result of our analysis, we have determined that for both Wuxi Suntech and Trina there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers, regions, and time periods in accordance with section 777A(d)(1)(B)(i) of the Act and our practice, as discussed in *Steel Nails* and as modified in *Wood Flooring.* We find, however, that the pattern of price differences can be taken into account using the standard average-to-average methodology because, based on the data before us, the average-to-average methodology does not mask differences in the patterns of prices between the targeted and non-targeted groups. Here, we determine that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is not meaningful relative to the size of the resulting margin.[18] Accordingly, we have applied the standard average-to-average methodology to all of Wuxi Suntech's and Trina's U.S. sales.[19]

Verification

As provided in section 782(i) of the Act, the Department verified the information submitted by Wuxi Suntech and Trina for use in the final determination. The Department used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondents.

[12] U.S. Customs and Border Protection (''CBP'') provided notification that HTSUS number 8501.31.8000 should be added to the scope of the investigation, as certain articles under this number may fall within the scope. *See* Memorandum from Gene H. Calvert through Mark Hoadley to the File, ''ACE Case Reference File Update,'' dated May 16, 2012.

[13] *See* section 777A (d)(1)(B) of the Act.

[14] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic (''CPSV'') Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Targeted Dumping Allegation for Suntech,'' dated February 13, 2012.

[15] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic (''CPSV'') Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Targeted Dumping Allegation for Trina,'' dated February 13, 2012.

[16] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (''*Steel Nails*'') and accompanying Issues and Decision Memorandum at Comments 1–9.

[17] *See* section 777A(d)(1)(B)(i) of the Act and *Steel Nails,* and accompanying Issues and Decision Memorandum at Comment 2.

[18] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) at 843 (''SAA'').

[19] *See e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 24885, 24888 (May 6, 2010) unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value,* 75 FR 59223 (September 27, 2010) and *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value,* 75 FR 16431 (April 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

Nonmarket Economy Country

The Department considers the PRC to be a nonmarket economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department continues to treat the PRC as an NME for purposes of this final determination.

Surrogate Country

In the *Preliminary Determination,* the Department stated that it selected Thailand as the appropriate surrogate country to use in this investigation pursuant to section 773(c)(4) of the Act based on the following: (1) It is at a similar level of economic development; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand that we can use to value the factors of production. In their case briefs, Wuxi Suntech and Trina state that India should be selected as surrogate country because India's solar cell industry and population resembles that of the PRC, Thai surrogate value data are deficient for certain inputs, and the record lacks financial statements for Thai producers of identical merchandise. Petitioner argues that India is not economically comparable to the PRC, and that the Department should continue to use Thailand as the surrogate country. As discussed in the Issues and Decision Memorandum, the Department continues to find that Thailand is the appropriate surrogate country for this investigation. For a complete discussion of surrogate country issues, *see* the Issues and Decision Memorandum at Comment 4.

Separate Rate Companies

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the instant investigation, the Department received timely-filed separate rate applications from 68 companies (''Separate Rate Applicants''). Interested parties have submitted a number of comments regarding some of the companies applying for separate rate status. After considering the comments, the Department has not changed its position from the *Preliminary Determination* with respect to the companies seeking separate rate status.

The Department continues to find that the evidence placed on the record of this investigation by the Separate Rate Applicants that were granted separate rate status in the *Preliminary Determination* demonstrates both *de jure* and *de facto* absence of government control with respect to each company's respective exports of the merchandise under investigation. Further, the Department has continued to deny certain companies separate rate status as was the case in the *Preliminary Determination.* For a complete discussion of separate rate issues, *see* the Issues and Decision Memorandum at Comment 6.

The separate rate is normally determined based on the weighted-average of the estimated dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available (''AFA'').[20] In this investigation, both Wuxi Suntech and Trina have estimated weighted-average dumping margins which are above *de minimis* and which are not based on total AFA. Because there are only two relevant weighted-average dumping margins for this final determination, using a weighted-average of these two margins risks disclosure of business proprietary information (''BPI'') data. Therefore, the Department has calculated both a simple average and a weighted-average of the two final dumping margins calculated for the mandatory respondents using public values for sales of subject merchandise reported by respondents and used the average that provides a more accurate proxy for the weighted-average margin of both companies calculated using BPI data, which in this investigation is 25.96 percent.[21]

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply facts available (''FA'') if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

PRC-Wide Entity

In the *Preliminary Determination,* the Department determined that certain PRC exporters/producers did not respond to the Department's requests for information and did not establish that they were separate from the PRC-wide entity. Thus, the Department has found that these PRC exporters/producers are part of the PRC-wide entity and the PRC-wide entity has not responded to our requests for information. Because the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on FA.

The Department determines that, because the PRC-wide entity did not respond to our request for information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department finds that, in selecting from among the FA, an adverse inference is appropriate for the PRC-wide entity.

Because the Department begins with the presumption that all companies within an NME country are subject to government control, and because only the mandatory respondents and certain Separate Rate Applicants have overcome that presumption, the Department is applying a single antidumping rate to all other exporters of subject merchandise from the PRC. Such companies have not demonstrated entitlement to a separate rate.[22]

Selection of the Adverse Facts Available Rate for the PRC-Wide Entity

In determining a rate for AFA, the Department's practice is to select a rate that is sufficiently adverse ''as to effectuate the purpose of the adverse

[20] *See* section 735(c)(5)(A) of the Act.

[21] See the October 9, 2012, memorandum from Jeff Pedersen to the File entitled ''Calculation of the Final Margin for Separate Rate Recipients.''

[22] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Market Value: Synthetic Indigo From the People's Republic of China,* 65 FR 25706, 25707 (May 2, 2000).

facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [23] Further, it is the Department's practice to select a rate that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [24] Thus, it is the Department's practice to select as AFA the higher of the (a) highest margin alleged in the petition or (b) the highest calculated rate of any respondent in the investigation.[25] In order to determine the probative value of the margins in the petition for use as AFA for purposes of this final determination, we analyzed the U.S. prices and normal values for each of the individually investigated parties. Based on this analysis, we determined that the price and normal value used to derive the highest margin contained in the petition are within the range of the U.S. prices and normal values for the respondents in this investigation.[26] Thus the highest petition margin has probative value. Accordingly, we have corroborated the petition margin to the extent practicable within the meaning of section 776(c) of the Act.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/producer combinations listed in the chart in the ''Final Determination'' section below.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. This practice is described in Policy Bulletin 05.1, available at *http://www.trade.gov/ia/.*

Final Determination

The Department determines that the following weighted-average dumping margins exist for the period April 1, 2011, through September 30, 2011.

Exporter	Producer	Weighted-average percent margin
Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd.	Changzhou Trina Solar Energy Co., Ltd	18.32
	Trina Solar (Changzhou) Science & Technology Co., Ltd	18.32
Wuxi Suntech Power Co., Ltd., Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd. and Wuxi Sun-shine Power Co., Ltd.	Wuxi Suntech Power Co., Ltd	31.73
	Luoyang Suntech Power Co., Ltd	31.73
	Suntech Power Co., Ltd	31.73
	Wuxi Sun-shine Power Co., Ltd	31.73
Baoding Tianwei Yingli New Energy Resources Co., Ltd	Baoding Tianwei Yingli New Energy Resources Co., Ltd	25.96
	Yingli Energy (China) Company Limited	25.96
Tianwei New Energy (Chengdu) PV Module Co., Ltd	Tianwei New Energy (Chengdu) PV Module Co., Ltd	25.96
Canadian Solar International Limited	Canadian Solar Manufacturing (Changshu) Inc	25.96
	Canadian Solar Manufacturing (Luoyang) Inc	25.96
Canadian Solar Manufacturing (Changshu) Inc	Canadian Solar Manufacturing (Changshu), Inc	25.96
Canadian Solar Manufacturing (Luoyang) Inc	Canadian Solar Manufacturing (Luoyang), Inc	25.96
Hanwha Solarone (Qidong) Co., Ltd	Hanwha Solarone (Qidong) Co., Ltd	25.96
CEEG (Shanghai) Solar Science Technology Co., Ltd	CEEG (Shanghai) Solar Science Technology Co., Ltd	25.96
	CEEG Nanjing Renewable Energy Co., Ltd	25.96
CEEG Nanjing Renewable Energy Co., Ltd	CEEG Nanjing Renewable Energy Co., Ltd	25.96
Jiawei Solarchina Co., Ltd	Jiawei Solarchina (Shenzhen) Co., Ltd	25.96
Yingli Energy (China) Company Limited	Yingli Energy (China) Company Limited	25.96
	Baoding Tianwei Yingli New Energy Resources Co., Ltd	25.96
LDK Solar Hi-tech (Nanchang) Co., Ltd	LDK Solar Hi-tech (Nanchang) Co., Ltd	25.96
LDK Solar Hi-tech (Suzhou) Co., Ltd	LDK Solar Hi-tech (Suzhou) Co., Ltd	25.96
Jiawei Solarchina (Shenzhen) Co., Ltd	Jiawei Solarchina (Shenzhen) Co., Ltd	25.96
Changzhou NESL Solartech Co., Ltd	Changzhou NESL Solartech Co., Ltd	25.96
China Sunergy (Nanjing) Co., Ltd	China Sunergy (Nanjing) Co., Ltd	25.96
Chint Solar (Zhejiang) Co., Ltd	Chint Solar (Zhejiang) Co., Ltd	25.96
Suzhou Shenglong PV-Tech Co., Ltd	Suzhou Shenglong PV–TECH Co., Ltd	25.96
tenKsolar (Shanghai) Co., Ltd	tenKsolar (Shanghai) Co., Ltd	25.96
Upsolar Group, Co., Ltd	HC Solar Power Co., Ltd	25.96
	Zhiheng Solar Inc	25.96
	Zhejiang Leye Photovoltaic Science & Technology Co., Ltd	25.96
	Tianwei New Energy (Chengdu) PV Module Co., Ltd	25.96
	Zhejiang ZG-Cells Co., Ltd	25.96
	Zhejiang Xinshun Guangfu Science and Technology Co., Ltd	25.96
	Zhejiang Jiutai New Energy Co., Ltd	25.96
Wanxiang Import & Export Co., Ltd	Zhejiang Wanxiang Solar Co., Ltd	25.96
Jinko Solar Import and Export Co., Ltd	Jinko Solar Co., Ltd	25.96
JinkoSolar International Limited	Jinko Solar Co., Ltd	25.96
CNPV Dongying Solar Power Co., Ltd	CNPV Dongying Solar Power Co., LTD	25.96
CSG PVTech Co., Ltd	CSG PVTech Co., Ltd	25.96
Delsolar Co., Ltd	DelSolar (Wujiang) Ltd	25.96

[23] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[24] *See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005)(quoting the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994)).

[25] *See, e.g., Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 60725, 60729 (October 1, 2010).

[26] *See* Wuxi Suntech and Trina Solar Analysis Memoranda.

Exporter	Producer	Weighted-average percent margin
Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	25.96
Eoplly New Energy Technology Co., Ltd	Eoplly New Energy Technology Co., Ltd	25.96
ERA Solar Co., Ltd	ERA Solar Co., Ltd	25.96
ET Solar Energy Limited	ET Solar Industry Limited	25.96
Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	25.96
Himin Clean Energy Holdings Co., Ltd	Himin Clean Energy Holdings Co., Ltd	25.96
JA Solar Technology Yangzhou Co., Ltd	JingAo Solar Co., Ltd	25.96
Jetion Solar (China) Co., Ltd	Jetion Solar (China) Co., Ltd	25.96
Jiangsu Green Power PV Co., Ltd	Jiangsu Green Power PV Co., Ltd	25.96
Jiangsu Sunlink PV Technology Co., Ltd	Jiangsu Sunlink PV Technology Co., Ltd	25.96
JingAo Solar Co., Ltd	JingAo Solar Co., Ltd	25.96
Konca Solar Cell Co., Ltd	Konca Solar Cell Co., Ltd	25.96
Leye Photovoltaic Co., Ltd	Leye Photovoltaic Co., Ltd	25.96
Lightway Green New Energy Co., Ltd	Lightway Green New Energy Co., Ltd	25.96
Motech (Suzhou) Renewable Energy Co., Ltd	Motech (Suzhou) Renewable Energy Co., Ltd	25.96
Ningbo ETDZ Holdings, Ltd	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., LTD.	25.96
Ningbo Komaes Solar Technology Co., Ltd	Ningbo Komaes Solar Technology Co., Ltd	25.96
Ningbo Qixin Solar Electrical Appliance Co., Ltd	Ningbo Qixin Solar Electrical Appliance Co., Ltd	25.96
Ningbo Ulica Solar Science & Technology Co., Ltd	Ningbo Ulica Solar Science & Technology Co., Ltd	25.96
Perlight Solar Co., Ltd	Perlight Solar Co., Ltd	25.96
Risen Energy Co., Ltd	Risen Energy Co., Ltd	25.96
Shanghai BYD Company Limited	Shanghai BYD Company Limited	25.96
Shanghai JA Solar Technology Co., Ltd	Shanghai JA Solar Technology Co., Ltd	25.96
Shanghai Solar Energy Science & Technology Co., Ltd	Shanghai Solar Energy Science & Technology Co., Ltd	25.96
Shenzhen Topray Solar Co., Ltd	Shenzhen Topray Solar Co., Ltd	25.96
Solarbest Energy-Tech (Zhejiang) Co., Ltd	Solarbest Energy-Tech (Zhejiang) Co., Ltd	25.96
Sopray Energy Co., Ltd	Sopray Energy Co., Ltd	25.96
Sumec Hardware & Tools Co., Ltd	Phono Solar Technology Co., Ltd	25.96
Sun Earth Solar Power Co., Ltd	Sun Earth Solar Power Co., Ltd	25.96
Yuhuan Sinosola Science & Technology Co., Ltd	Yuhuan Sinosola Science & Technology Co., Ltd	25.96
Yuhuan Solar Energy Source Co., Ltd	Yuhuan Solar Energy Source Co., Ltd	25.96
Zhejiang Jiutai New Energy Co., Ltd	Zhejiang Topoint Photovoltaic Co., Ltd	25.96
Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd	Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd	25.96
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company.	Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company.	25.96
PRC-Wide Rate		249.96

Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As noted above, the Department found that critical circumstances exist with respect to imports of merchandise under consideration from Trina, the Separate Rate Recipients (''SR Recipients''), and the PRC-wide entity. In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation of all appropriate entries of subject merchandise, as described in the ''Scope of Investigation'' section of this notice, from Trina, the SR Recipients, and the PRC-wide entity that were entered, or withdrawn from warehouse for consumption on or after the date 90 days prior of the publication of the *Preliminary Determination* in the **Federal Register**. Since critical circumstances do not exist for Wuxi Suntech, the Department will instruct CBP to suspend liquidation of all appropriate entries of subject merchandise from Wuxi Suntech that were entered, or withdrawn from warehouse for consumption on or after May 25, 2012, the publication date of the *Preliminary Determination* in the **Federal Register**. We will also instruct CBP to issue a refund for all appropriate entries of subject merchandise from Wuxi Suntech that were suspended up to 90 days prior to the publication date of the *Preliminary Determination.*

Further, the Department will instruct CBP to require a cash-deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) The rate for the exporter/producer combinations listed in the table above will be the rate we have determined in this final determination; (2) for all PRC exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

Certification Requirements

As noted above, the scope of both the AD and CVD investigations of solar cells cover modules, laminates, and panels produced in a third-country from solar cells produced in the PRC; however, modules, laminates, and panels produced in the PRC from solar cells produced in a third-country are not covered by the investigations. If an importer imports solar panels/modules that it claims do not contain solar cells that were produced in the PRC, the importer is required to maintain the importer certification in Appendix II to this notice. The importer and exporter

are also required to maintain the exporter certification in Appendix II to this notice if the exporter of the panels/modules for which the importer is making the claim is located in the PRC. We note that while importers and PRC-exporters will be required to maintain the aforementioned certifications and documentation, they will not have to provide this information to CBP as part of the entry documents, unless the certification or documentation is specifically requested by CBP.

If it is determined that the certification or documentation requirements noted in the certification have not been met, the Department intends to instruct CBP to suspend all unliquidated entries for which these requirements were not met and require the posting of a cash deposit or bond on those entries equal to the PRC-wide rate in effect at the time of the entry. If a solar panel/module contains some solar cells produced in the PRC, but the importer is unable or unwilling to identify the total value of the panel/module subject to the order, the Department intends to instruct CBP to suspend all unliquidated entries for which the importer has failed to supply this information and require the posting of a cash deposit or bond on the total entered value of the panel/module equal to the PRC-wide rate in effect at the time of the entry.[27]

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

[27] *See* memorandum from Maisha Cryor to Christian Marsh regarding ''Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Third-Country Case Numbers and Certifications'', dated May 16, 2012.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation,

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: October 9, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Issues for Final Determination

General Issues

Comment 1: Scope of the Investigation
Comment 2: Selection of Surrogate Financial Statements
Comment 3: Date of Sale
Comment 4: Surrogate Country
Comment 5: Labor Rate
Comment 6: Separate Rates
Comment 7: Overhead Items
Comment 8: Exclusion of Import Data with Values but Quantities of Zero
Comment 9: Surrogate Value for Wafers
Comment 10: Critical Circumstances
Comment 11: Allegations of Fraud
Comment 12: Application of *Sigma*
Comment 13: Double Remedies and Concurrent AD and CVD Investigations
Comment 14: Collection of Antidumping Duties
Comment 15: Surrogate Value for Quartz Crucibles
Comment 16: Surrogate Value for Aluminum Frames
Comment 17: Surrogate Value for Tin Ribbon
Comment 18: Surrogate Value for Glass Plate for Wafer Slicing

Issues Relating To Trina

Comment 19: Unreported FOPs by Cell Suppliers and Tollers
Comment 20: Ocean Freight Expenses
Comment 21: Errors Identified at Trina U.S.'s Verification
Comment 22: Source for Barge Freight
Comment 23: Whether to Apply NME Freight Charges to All of Trina's Sales
Comment 24: Surrogate Value for Polysilicon
Comment 25: Surrogate Value for Suspension
Comment 26: Surrogate Value for Trina's Back Sheet

Issues Relating to Wuxi Suntech

Comment 27: Whether Partial AFA Should be Used in Place of Unreported FOPs for Modules Assembled Under Back-to-Back Agreements
Comment 28: Whether Suntech America's Product Recall Expenses Should be Included In Indirect Selling Expenses
Comment 29: Exclusion of South Korean MEP Data
Comment 30: Acceptance of Minor Corrections Submitted at Verification
Comment 31: Exclusion of Sample Sales from the Margin Calculation
Comment 32: Valuing Inputs from NME Suppliers When the Inputs Were Used in Further Manufacturing
Comment 33: Whether Partial AFA Should be Applied to Value Labor and Energy for Tolled Modules
Comment 34: Whether the ISE Rate Should be Applied to Gross Unit Price Less Billing Adjustments and Early Payment Discounts
Comment 35: Suntech Arizona Financial Expense Rate
Comment 36: Whether Suntech America's Bad Debt Expense Should be Included
Comment 37: Verification Findings
Comment 38: Whether Certain Reported Market Economy Purchases Were Purchased from a Market Economy Supplier
Comment 39: Surrogate Value for PEG
Comment 40: Surrogate Value for Silica Purge of Liquid (IPA)
Comment 41: Surrogate Value for Hydrochloric Acid
Comment 42: Diamond Wire Saw Blade Surrogate Value
Comment 43: Whether Back-to-Back Arrangements Should be Considered Purchases or Tolling

Issues Relating to Other Respondents

Comment 44: Voluntary Respondent Treatment of Yingli
Comment 45: Treatment of Jiasheng's Separate Rate Application
Comment 46: Treatment of Chaori's Separate Rate Application

Appendix II—Importer Certification

I hereby certify that I am an official of *insert name of company importing solar panels/modules,* that I have knowledge of the facts regarding the importation of the solar panels/modules or other products containing solar panels/modules that entered under entry number(s) *insert entry number(s) covered by the certification,* and *that these solar panels/modules do not contain solar cells produced in the People's Republic of China.* By signing this certificate, I also hereby certify that *insert name of company importing solar panels/modules* maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules imported under the above-referenced entry number(s). I understand that agents of the importer, such as brokers, are not permitted to make this certification. Also, I am aware that records pertaining to this certification may be requested by CBP. I understand that this certification should be completed at the time of the entry. Also, I understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in the People's Republic of China will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit or, where

applicable, a bond, on those entries equal to the PRC-wide rate in effect at the time of the entry and a CVD cash deposit, or where applicable, a bond rate equal to the all-others rate in effect at the time of the entry.

Name of Company Official

Title

Date

Exporter Certification

I hereby certify that I am an official of *insert name of company exporting solar panels/modules,* that I have knowledge of the facts regarding the exportation of the solar panels/modules or other products containing solar panels/modules identified below, and *that these solar panels/modules do not contain solar cells produced in the People's Republic of China.* By signing this certificate, I also hereby certify that *insert name of company exporting solar panels/modules* maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules identified below. I am aware that records pertaining to this certification may be subject to verification by Department of Commerce officials and I consent to verification with respect to this certification and these records. I understand that this certification should be completed at the time of shipment. I also understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in the People's Republic of China will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit or, where applicable, a bond, on those entries equal to the PRC-wide rate in effect at the time of the entry and a CVD cash deposit, or where applicable, a bond rate equal to the all-others rate in effect at the time of the entry.

The exports covered by this certification are *insert invoice numbers, purchase order numbers, export documentation, etc. to identify the exports covered by the certification.*

Name of Company Official

Title

Date

[FR Doc. 2012–25580 Filed 10–16–12; 8:45 am]

BILLING CODE 3510–DS–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995. The Bureau is soliciting comments concerning its proposed information collection titled, ''Generic Clearance for the Collection of Qualitative Feedback on the Service Delivery of the Consumer Financial Protection Bureau.'' The proposed collection has been submitted to the Office of Management and Budget (OMB) for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before November 16, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by agency name and the title, ''Generic Clearance for the Collection of Qualitative Feedback on the Service Delivery of the Consumer Financial Protection Bureau'' to:

- *Agency:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552; (202) 435–9011; and *CFPB_Public_PRA@cfpb.gov*.
- *OMB:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9011, or through the internet at *CFPB_Public_PRA@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on the Service Delivery of the Consumer Financial Protection Bureau.

OMB Control Number: 3170–XXXX.

Summary: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Bureau has submitted a Generic Information Collection Request: ''Generic Clearance for the Collection of Qualitative Feedback on the Service Delivery of the Consumer Financial Protection Bureau'' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501, *et seq.*).

Type of Review: New Generic.

Abstract: The proposed information collection activity would garner qualitative feedback from consumers, financial institutions, and stakeholders on a wide range of services the Bureau provides in an efficient, timely manner, in accordance with the Bureau's commitment to improving service delivery. By qualitative feedback, the Bureau means information that provides useful insights on, for example, comprehension, usability, perceptions, and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. The Bureau expects this feedback to include insights into consumer, financial institution, 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 Bureau and consumers, financial institutions, and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from consumers, financial institutions, and stakeholders on the Bureau's services will be unavailable.

The Bureau will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

• Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Bureau (if released, the Bureau must indicate the qualitative nature of the information);

• Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance would provide useful information, but it would 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 to 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.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Affected Public: Individuals and Households; Businesses, Organizations, and other for-profit, not-for-profit institutions; and State, Local or Tribal Governments.

Average Expected Annual Number of Activities: 25.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 1 Hour per Response.

Frequency of Response: 1 per Year.

Estimated Total Annual Burden Hours: 250,000.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

The Bureau issued a 60-day **Federal Register** notice on August 7, 2012 77 FR 47045). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: October 10, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–25559 Filed 10–16–12; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requested comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of children's sleepwear. This collection of information is in the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 and regulations implementing those standards. See 16 CFR parts 1615 and 1616. The children's sleepwear standards and implementing regulations establish requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear.

This document was published in the **Federal Register** of October 4, 2012, and contains an incorrect docket number.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

Correction

(1) In the **Federal Register** of October 4, 2012, 77 FR 60684, in the second column, correct the docket number in the heading to read: [Docket No. CPSC–2012–0055];

(2) In the **Federal Register** of October 4, 2012, 77 FR 60684, in the second column, Correct the first sentence of the **ADDRESSES** section to read: ''You may submit comments, identified by Docket No. CPSC–2012–0055, by any of the following methods:''

Dated: October 12, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–25519 Filed 10–16–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requested comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of certain electrically operated toys and children's articles. The collection of information consists of testing and recordkeeping requirements in regulations titled, ''Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children,'' codified at 16 CFR part 1505.

This document was published in the **Federal Register** of October 4, 2012, and contains an incorrect docket number.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West

Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

Correction

(1) In the **Federal Register** of October 4, 2012, 77 FR 60685, in the second column, correct the docket number in the heading to read: [Docket No. CPSC–2012–0057];

(2) In the **Federal Register** of October 4, 2012, 77 FR 60685, in the third column, correct the first sentence of the **ADDRESSES** section to read: ''You may submit comments, identified by Docket No. CPSC–2012–0057, by any of the following methods:''

Dated: October 12, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–25523 Filed 10–16–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requested comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of citizens band base station antennas. The collection of information is in regulations setting forth the Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR part 1204). These regulations establish testing and recordkeeping requirements for manufacturers and importers of antennas subject to the standard.

This document was published in the **Federal Register** of October 4, 2012, and contains an incorrect docket number.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

Correction

(1) In the **Federal Register** of October 4, 2012, 77 FR 60682, in the first column, correct the docket number in the heading to read: [Docket No. CPSC–2012–0056];

(2) In the **Federal Register** of October 4, 2012, 77 FR 60682, in the first column, correct the first sentence of the **ADDRESSES** section to read: ''You may submit comments, identified by Docket No. CPSC–2012–0056, by any of the following methods:''

Dated: October 12, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–25522 Filed 10–16–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requested comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). This document was published in the **Federal Register** of October 4, 2012, and contains an incorrect docket number.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

Correction

(1) In the **Federal Register** of October 4, 2012, 77 FR 60686, in the third column, correct the docket number in the heading to read: [Docket No. CPSC–2012–0054];

(2) In the **Federal Register** of October 4, 2012, 77 FR 60686, in the third column, correct the first sentence of the **ADDRESSES** section to read: ''You may submit comments, identified by Docket No. CPSC–2012–0054, by any of the following methods:''

Dated: October 12, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–25520 Filed 10–16–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requested comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of walk-behind power lawn mowers. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205).

This document was published in the **Federal Register** of October 4, 2012, and contains an incorrect docket number.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

Correction

(1) In the **Federal Register** of October 4, 2012, 77 FR 60683, in the first column, correct the docket number in the heading to read: [Docket No. CPSC–2012–0058];

(2) In the **Federal Register** of October 4, 2012, 77 FR 60683, in the first column, correct the first sentence of the **ADDRESSES** section to read: ''You may submit comments, identified by Docket No. CPSC–2012–0058, by any of the following methods:''

Dated: October 12, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–25521 Filed 10–16–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 13–C0001]

Aqua-Leisure Industries, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Aqua-Leisure Industries, Inc., containing a civil penalty of $650,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 1, 2012.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 13–C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Jennifer W. Feinberg, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7843.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 12, 2012.

Todd A. Stevenson,

Secretary.

UNITED STATES OF AMERICA CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of: Aqua-Leisure Industries, Inc. CPSC Docket No.: *13–C0001*

SETTLEMENT AGREEMENT AND ORDER

1. In accordance with 16 C.F.R. § 1118.20, Aqua-Leisure Industries, Inc. (''Aqua Leisure'') and staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'' or ''CPSC'') hereby enter into this Settlement Agreement (''Agreement'') under the Consumer Product Safety Act (''CPSA''), 15 U.S.C. §§ 2051–2089. The Agreement and the attached Order resolve Staff's allegations set forth below.

THE PARTIES

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for, enforcement of the CPSA.

3. Aqua Leisure is a privately-held company, organized and existing under the laws of the state of Massachusetts, with its principal office located at 525 Bodwell Street, Avon, Massachusetts 02322–1098.

STAFF ALLEGATIONS

4. The Subject Products are ''consumer products'' and, at all relevant times, Aqua Leisure was a ''manufacturer'' of ''consumer products,'' which were ''distribute[d] in commerce,'' as those terms are defined or used in sections 3(a)(5), (8), and (11) of the CPSA, 15 U.S.C. § 2052(3)(a)(5), (8), and (11).

5. The Subject Products are defective because the leg straps in the seat of the inflatable baby boat can tear with normal use, causing children to unexpectedly fall into or under the water, posing a risk of drowning.

6. Aqua Leisure received its first complaint of sudden tearing of the seat crotch of certain models of its inflatable baby boats in 2001, and announced a recall of 90,000 of those boats on November 28, 2001 (the ''2001 Recall''). The 2001 Recall disclosed that Aqua Leisure and CPSC had received 12 reports of sudden tearing of the seat, including four reports that children were submerged completely under water before a caregiver was able to rescue the child.

7. For two years following the July 2001 recall, Staff monitored Aqua Leisure's execution of its Corrective Action Plan. On July 14, 2003, Staff notified Aqua Leisure of its decision to close the case, but reserved the right to reopen the matter if Staff determined that the public had not been adequately protected from the risk of injury presented by the product. Staff further advised that Aqua Leisure had a ''continuing obligation to inform the Commission of defects associated with this product * * *.''

8. After the 2001 Recall, the Firm continued to produce different versions of the inflatable baby boats, which also became the subject of consumer complaints. Between December 2002 and June 2009, Aqua Leisure distributed approximately 4 million of these inflatable baby boats (''Subject Products'') in U.S. commerce. The Subject Products came in 18 different models, and sold for approximately $8 to $15 each through nationwide retailers.

9. Between July 14, 2003, and July 31, 2006, Aqua Leisure became aware of 17 incidents in which these post-2001 Recall inflatable baby boat seats ''fell out''; ''ripped''; ''failed''; ''tore''; ''split''; and/or ''separated,'' including four incidents in which a baby boat seat ripped, causing children to fall into the water unexpectedly.

10. By July 2006, Aqua Leisure had information that the leg straps of the Subject Products were not being produced in accordance with the width and thickness specifications of the replacement product that had been evaluated by Staff as a part of the 2001 Recall and Corrective Action Plan.

11. In August 2008, Aqua Leisure senior executives raised concerns internally about a ''potential problem'' with the Subject Products, and began investigating the Subject Products and contemplating its obligation to report and the possibility of enforcement action by the CPSC. Aqua Leisure did not report to the CPSC at that time, however.

12. On October 31, 2008, CPSC Staff notified Aqua Leisure of an incident involving a 6-month-old girl who was completely submerged in a pool when the bottom of her inflatable baby boat seat ''broke completely.'' However, Aqua Leisure had previously received notice of this incident on July 25, 2008 yet the firm took no steps to report to the CPSC.

13. In addition, by October 31, 2008, Aqua Leisure was aware of at least 24 consumer complaints regarding the seats of the Subject Products since the 2001 Recall, including nine reports in which children fell through the Subject Products suddenly and were completely submerged underwater.

14. Aqua Leisure waited until March 12, 2009 to report to the CPSC, just hours before the publication of a news story by a Boston news team about problems with the Subject Products and Aqua Leisure's handling of complaints and potential failure to report to the Commission.

15. Aqua Leisure's initial report to the Commission on March 12, 2009, and its subsequent Full Report on April 17, 2009, incorrectly reported the scope and severity of the hazard: both reports identified only four incidents and only one model of boat affected by the potential problem, instead of the actual 28 complaints received for 18 different models.

16. On May 21, 2009, Aqua Leisure filed a Supplemental Full Report in which it reported that the Firm had received at least 28 consumer complaints regarding 18 different models of baby boats.

17. On July 2, 2009, Aqua Leisure announced a recall for the Subject Products. The recall disclosed 31 reports of inflatable baby boat seats tearing, causing children to fall into or under the water.

18. Although well before May 21, 2009, Aqua Leisure had obtained sufficient information to reasonably support the conclusion that the Subject Products contained a defect that could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Aqua Leisure failed to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4). In failing to inform the Commission immediately of the defect or advising that the defect involved the Subject Products, Aqua Leisure knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

19. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Aqua Leisure is subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

RESPONSE OF AQUA LEISURE

20. The Firm denies staff's allegations that it knew that the Subject Products contained

defects which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further denies that it knowingly violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

21. Like all inflatable pool toys, the Subject Products degrade over time. Section 1115.6 of Title 16 of the Code of Federal Regulations directs the Commission to consider, among other things, ''the level of exposure of consumers to the risk'' before determining that a reportable product defect exists. The reported failure rate for Subject Product leg straps was 0.0000063%. Of millions of units sold, Aqua Leisure received only 6 consumer reports (including suspect reports) in 2004, only 2 reports in 2005, only 7 reports in 2006, 3 in 2007, and 5 in 2008. The number of substantiated injuries is zero.

22. In addition, Section 1115.4 of title 15 of the Code of Federal Regulations requires the Commission to ''consider, as appropriate: * * * the adequacy of warnings and instructions to mitigate such risk'' before it determines that a product is defective. Each baby boat is accompanied by a warning that instructs parents to supervise their children, as follows: ''This is not a life saving device. Do not leave child unattended while in use. Only to be used in water in which the child is within its depth and under adult supervision. NEVER leave a child unattended. DO NOT overinflate or use high pressure air to inflate. Under NO circumstances should a child be left in or around water unless a competent adult swimmer is present supervising the child. DO NOT use with a baby who cannot sit confidently. The possibility DOES exist that a baby could tip the unit over. To reduce the risk of this happening, the water must be deep enough so that the baby cannot touch the bottom. Always exercise caution when babies are teething as they could puncture the baby boat. Do not give any playing accessories that have the potential to damage this product. Not suitable for children under 6 months.'' For these reasons, Aqua Leisure did not believe the leg straps tears were reportable events under Section 15(b).

AGREEMENT OF THE PARTIES

23. For purposes of this Agreement, as a manufacturer of consumer products distributed in U.S. commerce, Aqua Leisure is subject to the Commission's jurisdiction.

24. In settlement of Staff's allegations, Aqua Leisure consents to the entry of the attached Order (''Order'') as set forth below, and will pay a civil penalty in the amount of six hundred fifty thousand dollars ($650,000.00) (the ''Settlement Amount''), two hundred fifty thousand ($250,000.00) of which will be paid within twenty (20) days of the date this Order becomes final, and the remaining four hundred thousand ($400,000.00) of which will be paid within one hundred twenty (120) days of the date this Order becomes final. The payment shall be made to the CPSC via *www.pay.gov.*

25. Aqua Leisure warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Aqua Leisure, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants and obligations do, in fact, constitute such contemporaneous exchange. Further, the parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to, and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Aqua Leisure was or became indebted to on or after the date of transfer, within the meaning of 11 U.S.C. § 548(a)(1).

26. If within 91 days of the effective date of this Agreement or of any payment made under this Agreement, Aqua Leisure commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Aqua Leisure's debt's, or seeking to adjudicate Aqua Leisure as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Aqua Leisure or for all or any substantial part of Aqua Leisure's assets, Aqua Leisure agrees as follows:

a. Aqua Leisure's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Aqua Leisure shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Aqua Leisure's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Aqua Leisure was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Aqua Leisure.

b. If Aqua Leisure's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action or proceeding against Aqua Leisure. Aqua Leisure agrees that (i) any such action or proceeding brought by the United States seeking payment according to the Order set forth herein are enforcement actions that are not subject to an ''automatic stay'' pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceedings described in the first clause of this Paragraph and Aqua Leisure shall not argue or otherwise contend that the United States' action or proceeding is subject to an automatic stay and therefore barred; (ii) Aqua Leisure shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppels, or similar theories, to any such civil or administrative claims, actions or proceedings that are brought by the United States within 10 calendar days of written notification to Aqua Leisure that the releases have been rescinded pursuant to this Paragraph; and (iii) the United States has a valid claim against Aqua Leisure in the amount of $1.875 million and the United States may pursue its claim in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action or proceeding.

c. The agreements in Paragraphs 26(a) and 26(b) shall apply only when the circumstances described in Paragraph 26 exist. Aqua Leisure acknowledges that the agreements, restrictions and claim enhancements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

27. The parties further agree that if Aqua Leisure fails to make timely payments as agreed to in paragraph 24, such conduct will be considered a violation of this Agreement and Order.

28. Subject to Paragraphs 12 and 13, above, the Agreement is a full and complete resolution between Staff and Aqua Leisure, and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies and their successors and assigns of all claims for civil penalties that have been or could have been asserted based on the facts contained in Staff's allegations above.

29. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Aqua Leisure, or a determination by the Commission, that Aqua Leisure violated the CPSA's reporting requirements.

30. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 C.F.R. § 1118.20(f).

31. Upon the Commission's final acceptance of the Agreement and issuance of the Order, Aqua Leisure knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the Commission's actions; (c) a determination by the Commission of whether Aqua Leisure failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

32. The Commission may publicize the terms of the Agreement and the final Order.

33. The Agreement and the final Order shall apply to, and be binding upon, Aqua Leisure, and each of its successors and/or assigns, until the obligation described in paragraph 24 has been fulfilled.

34. The Commission issues the final Order under the provisions of the CPSA, and a violation of the final Order may subject Aqua Leisure, and each of its successors and/or assigns, to appropriate legal action.

35. The Agreement may be used in interpreting the final Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict the terms or the Agreement and the final Order. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto, executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

36. If any provision of the Agreement or the final Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the final Order, such provision shall be fully severable. The balance of the Agreement and the final Order shall remain in full force and effect, unless the Commission and Aqua Leisure agree that severing the provision materially affects the purpose of the Agreement and final Order.

37. This Agreement may be signed in counterparts.

AQUA-LEISURE INDUSTRIES, INC.

Dated: 8/21/12

By: _____

Steven Berenson, CEO
Aqua-Leisure Industries, Inc.

Dated: 8/21/12

By: _____

George Gigounas, Esq.
Counsel to Aqua-Leisure Industries, Inc.
DLA Piper
San Francisco, CA

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey
General Counsel

Mary B. Murphy
Assistant General Counsel
Division of Compliance

Dated: 9/19/12

By: _____

Jennifer W. Feinberg
Trial Attorney
Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of: Aqua-Leisure Industries, Inc. CPSC Docket No.: *13–C0001*

ORDER

Upon consideration of the Agreement entered into between Aqua-Leisure Industries, Inc. (''Aqua Leisure''), and U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Aqua Leisure, and it appearing that the Agreement and the Order are in the public interest, it is

ORDERED that the Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that Aqua Leisure shall pay a civil penalty in the total amount of six hundred fifty thousand dollars ($650,000.00), with two hundred fifty thousand dollars ($250,000.00) paid within twenty (20) days of service of the Commission's Order upon counsel for Aqua Leisure, and the remaining four hundred thousand ($400,000.00) paid within one hundred twenty (120) days of service. The payments shall be made electronically to the CPSC via *www.pay.gov.* Upon the failure of Aqua Leisure to make the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Aqua Leisure at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Aqua Leisure fails to make such payments as set forth in the Agreement, such conduct will be considered a violation of this Agreement and Order.

Provisionally accepted and provisional Order issued on the *11th* day of *October,* 2012.

BY ORDER OF THE COMMISSION:

_____

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2012–25507 Filed 10–16–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 36; OMB Control No. 9000–0147]

Federal Acquisition Regulation; Information Collection; Pollution Prevention and Right-to-Know Information (FAR 52.223–5)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning pollution prevention and right-to-know information.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 17, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0147, Pollution Prevention and Right-to-Know Information.

Instructions: Please submit comments only and cite Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Marissa Petrusek, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–0136 or email *marissa.petrusek@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

As implemented in Federal Acquisition Regulation (FAR) Subpart 23.10, Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, signed on October 5, 2009 (74 FR 52117, October 8, 2009) and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, signed on January 24, 2007 (72 FR 3919, January 26, 2007), mandates compliance with right-to-

know laws and pollution prevention requirements; implementation of an Environmental Management System (EMS); and completion of Facility Compliance Audits (FCAs).

This information collection will be accomplished by means of FAR clause 52.223–5. This clause requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act (PPA) of 1990 (42 U.S.C. 13101–13109) and the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 (42 U.S.C. 11001–11050). Additionally, this clause requires contractors to provide information necessary so that agencies can implement EMSs and complete FCAs at certain Federal facilities.

B. Annual Reporting Burden

The estimated annual reporting burden is slightly decreased since published in the **Federal Register** at 74 FR 48745, on September 24, 2009. The adjustment is made based on current data and consultation with Federal Government subject matter experts familiar with the requirements under this information collection.

Number of Respondents: 5,401.

Responses per Respondent: 1.

Total Annual Responses: 5,401.

Hours per Response: 3.7493.

Estimated Total Burden Hours: 20,250.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control Number 9000–0147, Pollution Prevention and Right-to-Know Information, in all correspondence.

Dated: October 11, 2012.

William Clark,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–25575 Filed 10–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 30; OMB Control No. 9000–0069]

Federal Acquisition Regulation; Information Collection; Indirect Cost Rates

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Indirect Cost Rates.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 17, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0069, Indirect Cost Rates, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0069, Indirect Cost Rates''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0069, Indirect Cost Rates'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0069, Indirect Cost Rates.

Instructions: Please submit comments only and cite Information Collection 9000–0069, Indirect Cost Rates, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Contract Policy Division, GSA, (202) 501–1448 or via email at *Curtis.glover@gsa.gov.*

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.

The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

The information collection in the FAR remains unchanged.

Respondents: 3,000.

Responses per Respondent: 1.

Annual Responses: 3,000.

Hours per Response: 2,188.

Total Burden Hours: 6,564,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

Dated: October 10, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–25554 Filed 10–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0152; Docket 2012–0076; Sequence 16]

Federal Acquisition Regulation; Information Collection; Service Contracting

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0152).

SUMMARY: Under the provisions of the Paperwork Reduction Act the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning service contracting. A notice was published in the **Federal Register** at 77 FR 37907, on June 25, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 16, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0152, Service Contracting, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0152, Service Contracting''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0152, Service Contracting'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0152, Service Contracting.

Instructions: Please submit comments only and cite Information Collection 9000–0152, Service Contracting, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 501–0136 or via email at *marissa.petrusek@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The policies implemented at FAR 37.115, Uncompensated Overtime, are based on Section 834 of Public Law 101–510 (10 U.S.C. 2331). The policies require insertion of FAR provision 52.237–10, Identification of Uncompensated Overtime, in all solicitations valued above the simplified acquisition threshold, for professional or technical services to be acquired on the basis of the number of hours to be provided. The provision requires that offerors identify uncompensated overtime hours, in excess of 40 hours per week, and the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees and discourages the use of uncompensated overtime.

B. Annual Reporting Burden

Number of Respondents: 19,906.

Responses per Respondent: 1.

Annual Responses: 19,906.

Average Burden Hours per Response: .5.

Total Burden Hours: 9,953.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0152, Service Contracting, in all correspondence.

Dated: October 5, 2012.

William Clark,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–25555 Filed 10–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Military Family Readiness Council (MFRC)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Department of Defense Military Family Readiness Council (MFRC). The purpose of the Council meeting is to review the military family programs and finalize the Council recommendations that will appear in the Council's Annual Report.

The meeting is open to the public, subject to the availability of space. Persons desiring to attend may contact Ms. Melody McDonald at 571–372–0880 or email *FamilyReadinessCouncil@osd.mil* no later than 5:00 p.m. on Monday, November 26, 2012 to arrange for parking and escort into the conference room inside the Pentagon.

Interested persons may submit a written statement for consideration by the Council. Persons desiring to submit a written statement to the Council must notify the point of contact listed in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m., Thursday, November 15, 2012.

DATES: Tuesday, December 11, 2012, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: Pentagon Conference Center B6 (escorts will be provided from the Pentagon Metro entrance).

FOR FURTHER INFORMATION CONTACT: Ms. Melody McDonald or Ms. Betsy Graham, Office of the Deputy Under Secretary of Defense (Military Community & Family Policy), 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. Telephones (571) 372–0880; (571) 372–0881 and/or email: *Family ReadinessCouncil@osd.mil.*

SUPPLEMENTARY INFORMATION: Meeting agenda.

Tuesday, December 11, 2012

Welcome & Administrative Remarks.

Review and Comment on Council Action from September meeting.

Program Evaluation and Recommendation discussion.

Office of the Secretary of Defense Changes to Family Policy.

Meeting Frequency discussion.

Closing Remarks.

Note: Exact order may vary.

Dated: October 12, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–25506 Filed 10–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Legal Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting.

ADDRESSES NRECA Conference Center, 4301 Wilson Blvd., Arlington, VA 22203.

DATES: A meeting of the Defense Legal Policy Board (hereafter referred to as ''the Board'') will be held on Wednesday, November 7, 2012. The Public Session will begin at 9:00 a.m. and end at 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. David Gruber, Defense Legal Policy Board, P.O. Box 3656, Arlington, VA 22203. Email: *StaffDirectorDefenseLegalPolicyBoard@osd.mil.* Phone: (703) 696–5449.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: At this meeting, the Board will deliberate on the July 30, 2012 tasking from the Secretary of Defense to review certain military justice cases in combat zones. The Board is interested in written and oral comments from the public, including non-governmental organizations, relevant to this tasking. The mission of the Board is to advise the Secretary of Defense on legal and related legal policy matters within DoD, the achievement of DoD policy goals through legislation and regulations, and other assigned matters.

Agenda: Prior to the Public Session, the Board will conduct an Administrative Session starting at 8:00 a.m. and ending at 8:45 a.m. to address administrative matters. After the Public Session, the Board will conduct an Administrative Session starting at 4:00 p.m. and ending at 5:00 p.m. to prepare for upcoming meetings. Pursuant to 41 CFR 102–3.160, the public may not attend the Administrative Sessions.

Public Session

9:00 a.m. to 9:30 a.m.—Status Report from Subcommittee

9:30 a.m. to 11:30 a.m.—Assessing Certain Military Justice Cases in Combat Zones

11:30 a.m. to 12:30 p.m.—Break

12:30 p.m. to 2:30 p.m.—Panel Discussion with Human Rights Organizations

2:30 p.m. to 3:30 p.m.—Public Comments Received

End of Public Session

Availability of Materials for the Meeting: A copy of the agenda for the November 7, 2012 meeting and the tasking for the Subcommittee may be obtained at the meeting or from the Board's Staff Director at *StaffDirector DefenseLegalPolicyBoard@osd.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, part of this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Staff Director at *Staff DirectorDefenseLegalPolicyBoard@osd.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public session. Written comments must be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in this notice in the following formats: Adobe Acrobat, WordPerfect, or Microsoft Word. Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted as above along with a request to provide an oral statement. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during the open portion of this meeting. Determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and relevance to the Committee's activities. Five minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted at 2:30 p.m. and 3:30 p.m. in front of the Board. The number of oral presentations to be made will depend on the number of requests received from members of the public.

Committee's Designated Federal Officer: The Board's Designated Federal Officer is Mr. James Schwenk, Defense Legal Policy Board, P.O. Box 3656, Arlington, VA 22203. Email: *defense legalpolicyboarddfo@osd.mil.* Phone: (703) 697–9343. For meeting information please contact Mr. David Gruber, Defense Legal Policy Board, P.O. Box 3656, Arlington, VA 22203. Email: *StaffDirectorDefenseLegalPolicyBoard@osd.mil.* Phone: (703) 696–5449.

Dated: October 12, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–25496 Filed 10–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–100–LNG]

Southern LNG Company, L.L.C.; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 20-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on August 31, 2012, by Southern LNG Company, L.L.C. (Southern LNG), requesting long-term, multi-contract authorization to export up to 4 million tons per annum (mtpa) of liquefied natural gas (LNG), the

equivalent of 182.5 billion cubic feet (Bcf) of natural gas per year or 0.5 Bcf per day (Bcf/d), over a 20-year period, commencing on the earlier of the date of first export or ten years from the date the requested authorization is granted. The LNG would be exported from the LNG terminal in Chatham County, Georgia, near the City of Savannah (Elba Island Terminal) to any country (1) with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, (2) which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and (3) with which trade is not prohibited by U.S. law or policy. The source of the LNG will be from direct connects with the interstate pipelines of Southern Natural Gas Company, L.L.C., Elba Express Company, L.L.C., Carolina Gas Transmission Corporation, and the indirect connects with interstate pipelines of Transcontinental Gas Pipe Line Company, LLC and Florida Gas Transmission, LLC. Southern LNG is requesting this authorization to export LNG both on its own behalf and as agent for other parties who hold title to the LNG at the point of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, December 17, 2012.

ADDRESSES:

Electronic Filing by email:
fergas@hq.doe.gov.

Regular Mail
U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)
U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Southern LNG is a Delaware limited liability company with its principal place of business in Birmingham, Alabama. Southern LNG is a wholly owned subsidiary of El Paso Pipeline Partners Operating Company, L.L.C. (EPPPOC). EPPPOC is a wholly owned subsidiary of El Paso Pipeline Partners, L.P. (EPPP). Kinder Morgan, Inc. owns the general partner interest in EPPP.

Southern LNG states that the Export Project (EP) will include natural gas processing and liquefaction facilities to receive, liquefy and export domestic natural gas at the Elba Island Terminal. The EP facilities will be integrated into the existing terminal facilities. Southern LNG states that the Elba Island Terminal includes (1) berthing and accommodations for two LNG vessels and unloading facilities and piping and appurtenances; (2) and LNG storage and vaporization facility (including five storage tanks capable of storing a total of approximately 550,000 cubic meters of LNG), vaporization units and associated piping and control equipment; (3) associated utilities, infrastructure, and support systems.

Southern LNG states that the EP facilities would permit gas to be (1) received by pipeline at the Elba Island Terminal, with these pipelines having indirect access to the nationally integrated interstate pipeline grid, (2) liquefied, and (3) loaded from the terminal's storage tanks onto vessels berthed at the existing marine facility. Southern LNG further states that the EP will be designed to allow Southern LNG to be capable of providing bi-directional service. Thus, once the EP facilities are operational, the Elba Island Terminal will have the capability to (1) liquefy domestic gas for export or (2) import LNG for delivery to domestic markets. Southern LNG states that it does not expect the EP to result in vessel traffic to or from the facility in excess of that currently authorized for the existing import facility.

Southern LNG states that the new facilities proposed would be subject to review and approval by the Federal Energy Regulatory Commission (FERC). Southern LNG states that upon completion of initial facility planning and design, it will request that the FERC initiate the mandatory pre-filing review process for the EP. Southern LNG further states that this request will be made before the end of 2012.

Current Application

In the instant application, Southern LNG seeks long-term, multi-contract authorization to export up to 4 mtpa of domestically produced natural gas, as LNG (the equivalent of 182.5 Bcf per year, or 0.5 Bcf/d of natural gas), for a period of 20 years beginning on the earlier of the date of first export or ten years from the date the authorization is granted by DOE/FE. Southern LNG requests that such long-term authorization provide for export from its Elba Island terminal to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas, which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy.

Southern LNG requests authorization to export LNG acting on its own behalf or as agent for others. Southern LNG states that to ensure that all exports are permitted and lawful under U.S. laws and policies, it will comply with all DOE requirements for an exporter or agent. Southern LNG states that in DOE/FE Order No. 2913,[1] the DOE approved a proposal to register each LNG title holder for whom the applicant sought to export LNG as agent. The applicant also proposed that this registration include a written statement by the tile holder acknowledging and agreeing to comply with all applicable requirements included in its export authorization and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. The applicant further stated that it would file under seal with the DOE any relevant long-term commercial agreements that it reached with the LNG title holders on whose behalf the exports were performed.

Southern LNG states that therefore, when acting as agent, it will register with the DOE each LNG title holder for whom it seeks to export as agent, and will provide the DOE with a written statement by the title holder acknowledging and agreeing to (1) comply with all requirements in its long-term export authorization, and (2) include those requirements in any subsequent purchase or sale agreement entered into by the title holder.

[1] Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, FE Docket No. 10–160–LNG, Order No. 2913 (February 10, 2011).

Southern LNG will also file under seal with the DOE any relevant long-term commercial agreements it enters into with the LNG title holders on whose behalf the exports are performed.

Public Interest Considerations

Southern LNG states that DOE/FE's primary consideration is whether the exports will be transacted on a market-driven, competitive basis. Southern LNG states that this is the case here: The owners of gas or the holders of capacity at the EP facilities will make decisions whether to export gas based on then prevailing market conditions in the domestic market and the destination markets. Southern LNG states that with export capability at the Elba Island Terminal, both exports and imports will be subject to the ultimate market test: Those with capacity at the terminal will decide whether the market warrants imports of LNG, exports of LNG or neither. Southern LNG states that while its transactions will be competitive, market-based transactions consistent with DOE/FE's public interest policy, it is aware of the ongoing debate over whether LNG exports will cause price increases in the domestic market that run counter to the public interest. In order to address such concerns, Southern LNG commissioned Navigant Consulting, Inc. (Navigant) to undertake a study of the potential impact to domestic supply and prices that might result from LNG exports. The Navigant Market Analysis Study, attached to the Application as Appendix A, considered the possible impacts that the EP might have on natural gas supply and pricing. Navigant's analysis also assumed the existence of additional LNG exports from other projects as well as an aggressive increase in natural gas demand due to the use of natural gas in transportation vehicles. Even in the High Demand Base Case, which assumes 7.2 Bcf/d of LNG exports in addition to Southern LNG's requested 0.5 Bcf/d and makes aggressive assumptions about natural gas vehicle demand, the impact on domestic prices over the term of the requested authorization is minimal.

Southern LNG states that Navigant concludes that LNG exports will actually encourage a more reliable and stable domestic natural gas market with less volatility, which will benefit all market participants. By providing an additional outlet for supply, LNG exports will help to level the peaks and valleys historically common to the natural gas industry. Southern LNG states that in other words, LNG exports will reduce the price volatility that can lead producers to curtail production and reduce investment when prices are declining, which, in turn, leads to prices to subsequently spike when production falls too low. Southern LNG also states that its EP will not rely on any particular source of gas, but rather, through the nationally integrated gas pipeline grid, and will be able to access gas supplies from a variety of producing basins within the U.S.

Southern LNG states that while contributing to the economic vibrancy of the Southeast region, another benefit of its EP is that, once constructed and in operation, the export facilities will be located within the footprint of the existing Elba Island Terminal and new LNG storage facilities do not have to be constructed in order for Southern LNG to provide the export service. Therefore, the EP's environmental impacts will be relatively small.

Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Environmental Impact

Southern LNG states that the EP will have minimal environmental impacts given that, following construction, the export facilities will be located within the previously authorized footprint of the existing Elba Island Terminal.[2] The FERC conducted an environmental review of the Elba Island Terminal site in connection with authorization of the siting, construction, and operation of the Terminal in Docket Nos. CP99–579–000, CP02–379–000, and CP06–470–000. Southern LNG states that the facilities associated with the EP will only require upgrades or additions to the existing infrastructure at the Elba Island Terminal. Southern LNG also states that any additional environmental impacts associated with construction and operation of the EP will be reviewed by the FERC and the applicable state and federal permitting agencies (e.g., United States Army Corps of Engineers, Georgia Department of Natural Resources, and Coast Guard, among others) as part of the permitting process for the EP. Consistent with its practice regarding other applications, DOE/FE will be a cooperating agency in the FERC's environmental review.[3] Southern LNG further states that it will keep DOE/FE apprised of the progress of the environmental review conducted by the FERC.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) emailing the filing to *fergas@hq.doe.gov* with FE

[2] See, e.g., Sabine Pass Liquefaction, LLC, et al, 139 FERC ¶ 61,039, at P 29 (2012).

[3] DOE/FE Order No. 2961–A, at 27.

Docket No. 12–100–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–100–LNG; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–100–LNG.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by Oregon LNG is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on October 11, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–25536 Filed 10–16–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1875–001.
Applicants: AltaGas Renewable Energy Colorado LLC.
Description: Informational Filing Regarding MBR Tariff Effective Date to be effective N/A.
Filed Date: 10/10/12.
Accession Number: 20121010–5040.
Comments Due: 5 p.m. ET 10/31/12.

Docket Numbers: ER12–2381–000.
Applicants: MP2 Energy NE LLC.
Description: MP2 Energy NE LLC submits response to September 11, 2012 letter requesting additional information.
Filed Date: 10/10/12.
Accession Number: 20121010–5125.
Comments Due: 5 p.m. ET 10/31/12.

Docket Numbers: ER13–57–000.
Applicants: Dominion Energy New England, LLC.
Description: Cancellation of MBR Tariff and Tariff ID to be effective 10/11/2012.
Filed Date: 10/10/12.
Accession Number: 20121010–5060.
Comments Due: 5 p.m. ET 10/31/12.

Docket Numbers: ER13–58–000.
Applicants: Rail Splitter Wind Farm, LLC.
Description: First Revised MBR to be effective 10/11/2012.
Filed Date: 10/10/12.
Accession Number: 20121010–5065.
Comments Due: 5 p.m. ET 10/31/12.

Docket Numbers: ER13–59–000.
Applicants: Pioneer Prairie Wind Farm I, LLC.
Description: First Revised MBR to be effective 10/11/2012.
Filed Date: 10/10/12.
Accession Number: 20121010–5066.
Comments Due: 5 p.m. ET 10/31/12.

Docket Numbers: ER13–60–000.
Applicants: Lost Lakes Wind Farm LLC.
Description: First Revised MBR to be effective 10/11/2012.
Filed Date: 10/10/12.
Accession Number: 20121010–5067.
Comments Due: 5 p.m. ET 10/31/12.

Docket Numbers: ER13–61–000.
Applicants: High Prairie Wind Farm II, LLC.
Description: First Revised MBR to be effective 10/11/2012.
Filed Date: 10/10/12.
Accession Number: 20121010–5068.
Comments Due: 5 p.m. ET 10/31/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–25532 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–130–000.
Applicants: CenterPoint Energy Gas Transmission Comp.
Description: Annual Report of Total Penalty Revenue Credits of CenterPoint Energy Gas Transmission Company, LLC.
Filed Date: 10/4/12.
Accession Number: 20121004–5058.
Comments Due: 5 p.m. ET 10/16/12.

Docket Numbers: RP13–131–000.
Applicants: CenterPoint Energy Gas Transmission Comp.
Description: Annual Report of Linked Firm Service Penalty Revenue Credits of CenterPoint Energy Gas Transmission Company, LLC.

Filed Date: 10/4/12.
Accession Number: 20121004–5059.
Comments Due: 5 p.m. ET 10/16/12.

Docket Numbers: RP13–132–000.
Applicants: CenterPoint Energy—Mississippi River T.
Description: Penalty Revenue Crediting Filing of CenterPoint Energy—Mississippi River Transmission, LLC.
Filed Date: 10/4/12.
Accession Number: 20121004–5061.
Comments Due: 5 p.m. ET 10/16/12.

Docket Numbers: RP13–148–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 10/10/12 Negotiated Rates—Hess (RTS) to be effective 11/1/2012.
Filed Date: 10/10/12.
Accession Number: 20121010–5130.
Comments Due: 5 p.m. ET 10/22/12.

Docket Numbers: RP13–149–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 10/10/12 Negotiated Rates—Tenaska (RTS) to be effective 11/1/2012.
Filed Date: 10/10/12.
Accession Number: 20121010–5131.
Comments Due: 5 p.m. ET 10/22/12.

Docket Numbers: RP13–150–000.
Applicants: Rendezvous Pipeline Company, LLC.
Description: Rendezvous Pipeline Company, LLC submits Notification of Change in Market Power Analysis and Request for Renewed Approval of Market Based Rates.
Filed Date: 10/10/12.
Accession Number: 20121010–5193.
Comments Due: 5 p.m. ET 10/22/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–25530 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–8–000.
Applicants: Pocahontas Prairie Wind, LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Consideration of Pocahontas Prairie Wind, LLC.
Filed Date: 10/9/12.
Accession Number: 20121009–5391.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: EC13–9–000.
Applicants: Homer City Generation, L.P., Edison Mission Marketing & Trading, Inc., EME HOMER CITY GENERATION LP.
Description: Joint Application of Homer City Generation, L.P., *et al.* for Authorization of Disposition of Facilities and Request for Expedited Consideration and Waivers.
Filed Date: 10/9/12.
Accession Number: 20121009–5426.
Comments Due: 5 p.m. ET 10/30/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–3–000.
Applicants: GE Energy Financial Services.
Description: Notice of Self-Certification as Exempt Wholesale Generator by Homer City Generation, L.P.
Filed Date: 10/9/12.
Accession Number: 20121009–5356.
Comments Due: 5 p.m. ET 10/30/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1868–001.
Applicants: New York Independent System Operator, Inc.
Description: NYISO Compliance Filing of TCC Tariff Revisions to Establish Effective Date to be effective 10/24/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5345.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: ER12–1932–002.
Applicants: Franklin County Wind, LLC.
Description: FCW Market-Based Rate Tariff—Second Revision to be effective 8/1/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5294.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: ER12–1933–003.
Applicants: Interstate Power and Light Company.
Description: IPL Market-Based Rate Tariff—Second Revision to be effective 8/1/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5296.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: ER12–1934–002.
Applicants: Wisconsin Power and Light Company.
Description: WPL Market-Based Rate Tariff—Second Revision to be effective 8/1/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5302.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: ER13–52–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position R33; Original Service Agreement No. 3395 to be effective 9/6/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5277.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: ER13–53–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position X3–029; Original Service Agreement Nos. 3400 to be effective 9/6/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5327.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: ER13–54–000.
Applicants: Pacific Gas and Electric Company.
Description: PWRPA 4th Amendment to Appendix B to IA and WDT Service Agreement to be effective 10/10/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5351.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: ER13–55–000.
Applicants: Homer City Generation, L.P.
Description: Homer City Generation, L.P. Application for Market-Based Rate Tariff to be effective 10/9/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5358.
Comments Due: 5 p.m. ET 10/30/12.

Docket Numbers: ER13–56–000.
Applicants: Westar Energy, Inc.
Description: Missouri Joint Municipal Electric Utility Commission Tariff Revision to be effective 12/10/2012.
Filed Date: 10/9/12.
Accession Number: 20121009–5364.
Comments Due: 5 p.m. ET 10/30/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–25531 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–1093–000.

Applicants: Northern Border Pipeline Company.

Description: Petition of Northern Border Pipeline Company for Approval of Settlement.

Filed Date: 9/27/12.

Accession Number: 20120927–5192.

Comments Due: 5 p.m. ET 10/15/12.

Docket Numbers: RP12–1101–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Request for Waiver of Questar Overthrust Pipeline Company.

Filed Date: 9/27/12.

Accession Number: 20120927–5209.

Comments Due: 5 p.m. ET 10/12/12.

Docket Numbers: RP13–147–000.

Applicants: WestGas InterState, Inc.

Description: 20121009 Compliance Filing 587–V to be effective 12/1/2012.

Filed Date: 10/9/12.

Accession Number: 20121009–5289.

Comments Due: 5 p.m. ET 10/22/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–908–001.

Applicants: TC Offshore LLC.

Description: Compliance to RP12–908 to be effective 11/1/2012.

Filed Date: 10/9/12.

Accession Number: 20121009–5225.

Comments Due: 5 p.m. ET 10/22/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–25533 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioners and Staff Attendance at FERC Author Speaker Series Event

The Federal Energy Regulatory Commission (FERC or Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following event:

Author Speaker Series featuring Daniel Yergin: 888 First Street NE., Washington, DC 20426. October 30, 2012 (10:00 a.m.–12:00 p.m.)

The event will feature Pulitzer Prize winning author, Daniel Yergin, presenting on his most recent book, *The Quest.*

Dated: October 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–25516 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13768–001]

FFP Solia 6 Hydroelectric, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13768–001.

c. *Date Filed:* August 17, 2012.

d. *Submitted By:* Free Flow Power Corporation on behalf of its subsidiary limited liability corporation, Solia 6 Hydroelectric, LLC.

e. *Name of Project:* Montgomery Lock and Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corp of Engineer's Montgomery Lock and Dam on the Ohio River in Beaver County, Pennsylvania. The project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ramya Swaminathan, Chief Operating Officer, Free Low Power, 239 Causeway Street, Boston, MA 02114–2130; (978) 283–2822; or email at *rswaminathan@free-flow-power.com.*

i. *FERC Contact:* Gaylord Hoisington at (202) 502–6032 or email at *gaylord.hoisington@ferc.gov.*

j. Free Flow Power filed its request to use the Traditional Licensing Process on August 17, 2012. Free Flow Power provided public notice of its request on August 13, 2012. In a letter dated October 4, 2012, the Director of the Division of Hydropower Licensing approved Free Flow Power's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305 (b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and the (c) Pennsylvania State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Free Flow Power as the Commission's

non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation Act, and section 106 of the National Historic Preservation Act.

m. Free Flow Power filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–25514 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13757–001; Project No. 13761–001]

FFP Missouri 5, LLC; FFP Missouri 6, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project Nos.:* P–13757–001, P–13761–001.

c. *Date Filed:* August 17, 2012.

d. *Submitted By:* Free Flow Power Corporation on behalf of its subsidiary limited liability corporations (listed above and collectively referred to below as ''Free Flow Power'').

e. *Name of Projects:* Emsworth Lock and Dam Hydroelectric Project, P–13757–001; and Emsworth Back Channel Hydroelectric Project, P–13761–001.

f. *Location:* At existing U.S. Army Corps of Engineer's Emsworth Lock and Dam and the Emsworth Back Channel Lock and Dam, both located on the Ohio River in Allegheny County, Pennsylvania. The projects would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ramya Swaminathan, Chief Operating Officer, Free Flow Power, 239 Causeway Street, Boston, MA 02114–2130; (978) 283–2822; or email at *rswaminathan@free-flow-power.com*.

i. *FERC Contact:* Gaylord Hoisington at (202) 502–6032; or email at *gaylord.hoisington@ferc.gov*.

j. Free Flow Power filed its request to use the Traditional Licensing Process on August 17, 2012. Free Flow Power provided public notice of its request on August 13, 2012. In a letter dated October 4, 2012, the Director of the Division of Hydropower Licensing approved Free Flow Power's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Pennsylvania Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Free Flow Power as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Free Flow Power filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–25515 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 18, 2012.

Note: The Closed meeting will begin at the conclusion of the Open meeting.

PLACE: Room 2C, Commission Meeting Room, 888 First Street NE., Washington, DC 20426.

STATUS: Closed. Non-Public.

MATTERS TO BE CONSIDERED: Investigations and Inquiries, Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

Chairman Wellinghoff and Commissioners Moeller, Norris, LaFleur, and Clark voted to hold a closed meeting on October 18, 2012. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary, the General Counsel and members of his staff, and a stenographer are expected to attend the meeting. Other staff members from

the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Dated: Issued October 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–25491 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–2–000]

Sunoco Pipeline L.P.; Notice of Petition for Declaratory Order

Take notice that on October 9, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Sunoco Pipeline L.P. (''SPLP''), filed a petition seeking a declaratory order approving priority service, the overall tariff and rate structure and service request allocation methodology for the proposed Permian Express Phase I Project (the ''Project'').

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Friday, November 9, 2012.

Dated: October 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–25518 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–1–000]

Tesoro High Plains Pipeline Company, LLC; Notice of Request for Temporary Waiver of Tariff Filing and Reporting Requirements

On October 9, 2012 Tesoro High Plains Pipeline Company, LLC (THPP) filed a Request for a Temporary Waiver of Tariff Filing and Reporting Requirements. THPP requests that the Commission grant a temporary waiver from the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act for the sections of its pipeline connecting the Saddle Butte Pipeline, LLC and Arrow Midstream Holdings, LLC gathering systems to the Johnson's Corner destination point on the THPP mainline. The sections of pipeline for which the temporary exemption is requested will be owned by THPP, and all crude oil shipped on these portions of the THPP pipeline system will be owned entirely by THPP's affiliates.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Monday, October 22, 2012.

Dated: October 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–25517 Filed 10–16–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA–HQ–OECA–2012–0642, 0643, 0645, 0646, 0653–0660, 0662, 0664–0666, 0668, 0669, 0676–0681, 0685–0688, 0690, 0691, 0693, 0695, 0697, 0699, 0701–703 [FRL–9742–5]]

Agency Information Collection Activities: Request for Comments on Thirty-Seven Proposed Information Collection Requests (ICR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following thirty-seven existing, approved, continuing Information

Collection Requests (ICR) to the Office of Management and Budget (OMB) for the purpose of renewing the ICR. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described under **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before December 17, 2012.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION**, section A.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION**, section II.C.

SUPPLEMENTARY INFORMATION:

A. How can I access the docket and/or submit comments?

(1) Docket Access Instructions

EPA has established a public docket for the ICRs listed in the **SUPPLEMENTARY INFORMATION**, section II.B. The docket is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket and Information Center (ECDIC), in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center (ECDIC) docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified in this document.

(2) Instructions for Submitting Comments

Submit your comments by one of the following methods:

(a) *Electronic Submission:* Access *http://www.regulations.gov* and follow the on-line instructions for submitting comments.

(b) *Email: docket.oeca@epa.gov.*

(c) *Fax:* (202) 566–1511.

(d) *Mail:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail code: 2201T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

(e) *Hand Delivery:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Direct your comments to the specific docket listed in **SUPPLEMENTARY INFORMATION**, section II.B, and reference the OMB Control Number for the ICR. It is EPA policy that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

B. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies, or other forms of information technology, e.g., permitting electronic submission of responses.

C. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing comments:

(1) Explain your views as clearly as possible and provide specific examples.

(2) Describe any assumptions that you used.

(3) Provide copies of any technical information and/or data you used that support your views.

(4) If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

(5) Offer alternative ways to improve the collection activity.

(6) Make sure to submit your comments by the deadline identified under **DATES.**

(7) To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. ICRs To Be Renewed

A. For All ICRs

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICRs listed in this notice. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the PRA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions to; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The listed ICRs address Clean Air Act information collection requirements in standards (i.e., regulations) which have mandatory recordkeeping and reporting requirements. Records collected under the New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years and the records collected under the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required collections consist of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the Agency displays a currently valid OMB control number. The OMB control numbers for the EPA regulations under Title 40 of the Code of Federal Regulations are published in the **Federal Register**, or on the related collection instrument or form. The display of OMB control numbers for certain EPA regulations is consolidated at 40 CFR part 9.

B. What information collection activity or ICR does this apply to?

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following thirty-seven Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) *Docket ID Number:* EPA–HQ–OECA–2012–0659.

Title: NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M).

ICR Numbers: EPA ICR Number 1415.10, OMB Control Number 2060–0234.

ICR Status: This ICR is scheduled to expire on March 31, 2013.

(2) *Docket ID Number:* EPA–HQ–OECA–2012–0680.

Title: Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (40 CFR Part 60, Subpart Cc and 40 CFR Part 62, Subpart GGG).

ICR Numbers: EPA ICR Number 1893.06, OMB Control Number 2060–0430.

ICR Status: This ICR is scheduled to expire on March 31, 2013.

(3) *Docket ID Number:* EPA–HQ–OECA–2012–0693.

Title: NESHAP for Taconite Iron Ore Processing (40 CFR Part 63, Subpart RRRRR).

ICR Numbers: EPA ICR Number 2050.05, OMB Control Number 2060–0538.

ICR Status: This ICR is scheduled to expire on March 31, 2013.

(4) *Docket ID Number:* EPA–HQ–OECA–2012–0653.

Title: NSPS for Steel Plants: Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR Part 60, Subparts AA and AAa).

ICR Numbers: EPA ICR Number 1060.16, OMB Control Number 2060–0038.

ICR Status: This ICR is scheduled to expire on March 31, 2013.

(5) *Docket ID Number:* EPA–HQ–OECA–2012–0703.

Title: NESHAP for Prepared Feeds Manufacturing (40 CFR Part 63, Subpart DDDDDDD).

ICR Numbers: EPA ICR Number 2354.03, OMB Control Number 2060–0635.

ICR Status: This ICR is scheduled to expire on March 31, 2013.

(6) *Docket ID Number:* EPA–HQ–OECA–2012–0642.

Title: NESHAP for Chemical Preparations Industry (40 CFR Part 63, Subpart BBBBBBB).

ICR Numbers: EPA ICR Number 2356.03, OMB Control Number 2060–0636.

ICR Status: This ICR is scheduled to expire on March 31, 2013.

(7) *Docket ID Number:* EPA–HQ–OECA–2012–0655.

Title: NSPS for Ammonium Sulfate Manufacturing Plants (40 CFR Part 60, Subpart PP).

ICR Numbers: EPA ICR Number 1066.07, OMB Control Number 2060–0032.

ICR Status: This ICR is scheduled to expire on April 30, 2013.

(8) *Docket ID Number:* EPA–HQ–OECA–2012–0702.

Title: NESHAP for Area Sources: Polyvinyl Chloride and Copolymer Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals-Zinc, Cadmium, and Beryllium.

ICR Numbers: EPA ICR Number 2240.04, OMB Control Number 2060–0596.

ICR Status: This ICR is scheduled to expire on May 31, 2013.

(9) *Docket ID Number:* EPA–HQ–OECA–2012–0691.

Title: NESHAP for Mercury Cell Chlor-Alkali Plants (40 CFR Part 63, Subpart IIIII).

ICR Numbers: EPA ICR Number 2046.07, OMB Control Number 2060–0542.

ICR Status: This ICR is scheduled to expire on May 31, 2013.

(10) *Docket ID Number:* EPA–HQ–OECA–2012–0699.

Title: NESHAP for Primary Magnesium Refining (40 CFR Part 63, Subpart TTTTT).

ICR Numbers: EPA ICR Number 2098.06, OMB Control Number 2060–0536.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(11) *Docket ID Number:* EPA–HQ–OECA–2012–0666.

Title: NESHAP for the Printing and Publishing Industry (40 CFR Part 63, Subpart KK).

ICR Numbers: EPA ICR Number 1739.07, OMB Control Number 2060–0335.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(12) *Docket ID Number:* EPA–HQ–OECA–2012–0643.

Title: NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR Part 60, Subpart RR).

ICR Numbers: EPA ICR Number 0658.11, OMB Control Number 2060–0004.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(13) *Docket ID Number:* EPA–HQ–OECA–2012–0669.

Title: NESHAP for Oil and Natural Gas Production (40 CFR Part 63, Subpart HH).

ICR Numbers: EPA ICR Number 1788.10, OMB Control Number 2060–0417.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(14) *Docket ID Number:* EPA–HQ–OECA–2012–0695.

Title: NESHAP for Site Remediation (40 CFR Part 63, Subpart GGGGG).

ICR Numbers: EPA ICR Number 2062.05, OMB Control Number 2060–0534.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(15) *Docket ID Number:* EPA–HQ–OECA–2012–0688.

Title: NESHAP for Plastic Parts and Products Surface Coating (40 CFR Part 63, Subpart PPPP).

ICR Numbers: EPA ICR Number 2044.05, OMB Control Number 2060–0537.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(16) *Docket ID Number:* EPA–HQ–OECA–2012–0658.

Title: NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants (40 CFR Part 60, Subpart PPP and 40 CFR Part 63, Subpart NNN).

ICR Numbers: EPA ICR Number 1160.11, OMB Control Number 2060–0114.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(17) *Docket ID Number:* EPA–HQ–OECA–2012–0657.

Title: NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR Part 60, Subpart FFF).

ICR Numbers: EPA ICR Number 1157.10, OMB Control Number 2060–0073.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(18) *Docket ID Number:* EPA–HQ–OECA–2012–0677.

Title: NSPS for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction or Modification Commenced after June 11, 1973, and prior to May 19, 1978 (40 CFR Part 60, Subpart K).

ICR Numbers: EPA ICR Number 1797.06, OMB Control Number 2060–0442.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(19) *Docket ID Number:* EPA–HQ–OECA–2012–0681.

Title: NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart CCCC).

ICR Numbers: EPA ICR Number 1926.06, OMB Control Number 2060–0450.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(20) *Docket ID Number:* EPA–HQ–OECA–2012–0645.

Title: NSPS for Nitric Acid Plants (40 CFR Part 60, Subpart G).

ICR Numbers: EPA ICR Number 1056.11, OMB Control Number 2060–0019.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(21) *Docket ID Number:* EPA–HQ–OECA–2012–0654.

Title: NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR Part 60, Subpart MM).

ICR Numbers: EPA ICR Number 1064.17, OMB Control Number 2060–0034.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(22) *Docket ID Number:* EPA–HQ–OECA–2012–0656.

Title: NSPS for Lead-Acid Battery Manufacturing (40 CFR Part 60, Subpart KK).

ICR Numbers: EPA ICR Number 1072.10, OMB Control Number 2060–0081.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(23) *Docket ID Number:* EPA–HQ–OECA–2012–0701.

Title: NESHAP for Miscellaneous Coating Manufacturing (40 CFR Part 63, Subpart HHHHH).

ICR Numbers: EPA ICR Number 2115.04, OMB Control Number 2060–0535.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(24) *Docket ID Number:* EPA–HQ–OECA–2012–0676.

Title: NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (40 CFR Part 63, Subparts AA and BB).

ICR Numbers: EPA ICR Number 1790.06, OMB Control Number 2060–0361.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(25) *Docket ID Number:* EPA–HQ–OECA–2012–0668.

Title: NESHAP for Flexible Polyurethane Foam Product (40 CFR Part 63, Subpart III)

ICR Numbers: EPA ICR Number 1783.06, OMB Control Number 2060–0357

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(26) *Docket ID Number:* EPA–HQ–OECA–2012–0685.

Title: Emission Guidelines for Existing Commerce and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart DDDD).

ICR Numbers: EPA ICR Number 1927.06, OMB Control Number 2060–0451.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(27) *Docket ID Number:* EPA–HQ–OECA–2012–0660.

Title: NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (40 CFR Part 63, Subpart T).

ICR Numbers: EPA ICR Number 1652.08, OMB Control Number 2060–0273.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(28) *Docket ID Number:* EPA–HQ–OECA–2012–0665.

Title: NESHAP for Magnetic Tape Manufacturing Operations (40 CFR Part 63, Subpart EE).

ICR Numbers: EPA ICR Number 1678.08, OMB Control Number 2060–0326.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(29) *Docket ID Number:* EPA–HQ–OECA–2012–0678.

Title: NESHAP for Mineral Wool Production (40 CFR Part 63, Subpart DDD).

ICR Numbers: EPA ICR Number 1799.07, OMB Control Number 2060–0362.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(30) *Docket ID Number:* EPA–HQ–OECA–2012–0664.

Title: NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations (40 CFR Part 63, Subpart O).

ICR Numbers: EPA ICR Number 1666.09, OMB Control Number 2060–0283.

ICR Status: This ICR is scheduled to expire on June 30, 2013.

(31) *Docket ID Number:* EPA–HQ–OECA–2012–0646.

Title: NSPS for Incinerators (40 CFR Part 60, Subpart E).

ICR Numbers: EPA ICR Number 1058.11, OMB Control Number 2060–0040.

ICR Status: This ICR is scheduled to expire on August 31, 2013.

(32) *Docket ID Number:* EPA–HQ–OECA–2012–0697.

Title: NESHAP for Iron and Steel Foundries (40 CFR Part 63, Subpart EEEEE).

ICR Numbers: EPA ICR Number 2096.05, OMB Control Number 2060–0543.

ICR Status: This ICR is scheduled to expire on September 30, 2013.

(33) *Docket ID Number:* EPA–HQ–OECA–2012–0686.

Title: NESHAP for Organic Liquids Distribution (Non-Gasoline) Facilities (40 CFR Part 63, Subpart EEEE).

ICR Numbers: EPA ICR Number 1963.05, OMB Control Number 2060–0539.

ICR Status: This ICR is scheduled to expire on September 30, 2013.

(34) *Docket ID Number:* EPA–HQ–OECA–2012–0662.

Title: NESHAP for Gasoline Distribution Facilities (40 CFR Part 63, Subpart R).

ICR Numbers: EPA ICR Number 1659.08, OMB Control Number 2060–0325.

ICR Status: This ICR is scheduled to expire on September 30, 2013.

(35) *Docket ID Number:* EPA–HQ–OECA–2012–0687.

Title: NESHAP for Stationary Combustion Turbines (40 CFR Part 63, Subpart YYYY).

ICR Numbers: EPA ICR Number 1967.05, OMB Control Number 2060–0540.

ICR Status: This ICR is scheduled to expire on September 30, 2013.

(36) *Docket ID Number:* EPA–HQ–OECA–2012–0690.

Title: NESHAP for Automobile and Light-duty Truck Surface Coating (40 CFR Part 63, Subpart IIII).

ICR Numbers: EPA ICR Number 2045.05, OMB Control Number 2060–0550.

ICR Status: This ICR is scheduled to expire on September 30, 2013.

(37) *Docket ID Number:* EPA–HQ–OECA–2012–0679.

Title: NESHAP for Petroleum Refineries: Catalytic Cracking Units, Reforming and Sulfur Units (40 CFR Part 63, Subpart UUU).

ICR Numbers: EPA ICR Number 1844.05, OMB Control Number 2060–0554.

ICR Status: This ICR is scheduled to expire on September 30, 2013.

C. Contact Individuals for ICRs

(1) NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1415.10, OMB Control Number 2060–0234; expiration date March 31, 2013.

(2) Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (40 CFR Part 60, Subpart Cc and 40 CFR Part 62, Subpart GGG); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov*; EPA ICR Number 1893.06, OMB Control Number 2060–0430; expiration date March 31, 2013.

(3) NESHAP for Taconite Iron Ore Processing (40 CFR Part 63, Subpart RRRRR); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2050.05, OMB Control Number 2060–0538; expiration date March 31, 2013.

(4) NSPS for Steel Plants: Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR Part 60, Subparts AA and AAa); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1060.16, OMB Control Number 2060–0038; expiration date March 31, 2013.

(5) NESHAP for Prepared Feeds Manufacturing (40 CFR Part 63, Subpart DDDDDDD); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2354.03, OMB Control Number 2060–0635; expiration date March 31, 2013.

(6) NESHAP for Chemical Preparations Industry (40 CFR Part 63, Subpart BBBBBBB); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2356.03, OMB Control Number 2060–0636; expiration date March 31, 2013.

(7) NSPS for Ammonium Sulfate Manufacturing Plants (40 CFR Part 60, Subpart PP); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1066.07, OMB Control Number 2060–0032; expiration date April 30, 2013.

(8) NESHAP for Area Sources: Polyvinyl Chloride and Copolymer Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium; Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2240.04, OMB Control Number 2060–0596; expiration date May 31, 2013.

(9) NESHAP for Mercury Cell Chlor-Alkali Plants (40 CFR Part 63, Subpart IIIII); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2046.07, OMB Control Number 2060–0542; expiration date May 31, 2013.

(10) NESHAP for Primary Magnesium Refining (40 CFR Part 63, Subpart TTTTT); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2098.06, OMB Control Number 2060–0536; expiration date June 30, 2013.

(11) NESHAP for the Printing and Publishing Industry (40 CFR Part 63, Subpart KK); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1739.07, OMB Control Number 2060–0335; expiration date June 30, 2013.

(12) NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR Part 60, Subpart RR); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 0658.11, OMB Control Number 2060–0004; expiration date June 30, 2013.

(13) NESHAP for Oil and Natural Gas Production (40 CFR Part 63, Subpart HH); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1788.10, OMB Control Number 2060–0417; expiration date June 30, 2013.

(14) NESHAP for Site Remediation (40 CFR Part 63, Subpart GGGGG); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2062.05, OMB Control Number 2060–0534; expiration date June 30, 2013.

(15) NESHAP for Plastic Parts and Products Surface Coating (40 CFR Part 63, Subpart PPPP); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2044.05, OMB Control Number 2060–0537; expiration date June 30, 2013.

(16) NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants (40 CFR Part 60, Subpart PPP and 40 CFR Part 63, Subpart NNN); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1160.11, OMB Control Number 2060–0114; expiration date June 30, 2013.

(17) NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR Part 60, Subpart FFF); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1157.10, OMB Control Number 2060–0073; expiration date June 30, 2013.

(18) NSPS for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction or Modification Commenced after June 11, 1973, and prior to May 19, 1978 (40 CFR Part 60, Subpart K); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1797.06, OMB Control Number 2060–0442; expiration date June 30, 2013.

(19) NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart CCCC); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1926.06, OMB Control Number 2060–0450; expiration date June 30, 2013.

(20) NSPS for Nitric Acid Plants (40 CFR Part 60, Subpart G); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1056.11, OMB Control Number

2060–0019; expiration date June 30, 2013.

(21) NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR Part 60, Subpart MM); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1064.17, OMB Control Number 2060–0034; expiration date June 30, 2013.

(22) NSPS for Lead-Acid Battery Manufacturing (40 CFR Part 60, Subpart KK); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1072.10, OMB Control Number 2060–0081; expiration date June 30, 2013.

(23) NESHAP for Miscellaneous Coating Manufacturing (40 CFR Part 63, Subpart HHHHH); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2115.04, OMB Control Number 2060–0535; expiration date June 30, 2013.

(24) NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (40 CFR Part 63, Subparts AA and BB); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1790.06, OMB Control Number 2060–0361; expiration date June 30, 2013.

(25) NESHAP for Flexible Polyurethane Foam Product (40 CFR Part 63, Subpart III); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1783.06, OMB Control Number 2060–0357; expiration date June 30, 2013.

(26) Emission Guidelines for Existing Commerce and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart DDDD); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1927.06, OMB Control Number 2060–0451; expiration date June 30, 2013.

(27) NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (40 CFR Part 63, Subpart T); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1652.08, OMB Control Number 2060–0273; expiration date June 30, 2013.

(28) NESHAP for Magnetic Tape Manufacturing Operations (40 CFR Part 63, Subpart EE); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1678.08, OMB Control Number 2060–0326; expiration date June 30, 2013.

(29) NESHAP for Mineral Wool Production (40 CFR Part 63, Subpart DDD); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1799.07, OMB Control Number 2060–0362; expiration date June 30, 2013.

(30) NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations (40 CFR Part 63, Subpart O); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1666.09, OMB Control Number 2060–0283; expiration date June 30, 2013.

(31) NSPS for Incinerators (40 CFR Part 60, Subpart E); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1058.11, OMB Control Number 2060–0040; expiration date August 31, 2013.

(32) NESHAP for Iron and Steel Foundries (40 CFR Part 63, subpart EEEEE); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2096.05, OMB Control Number 2060–0538; expiration date September 30, 2013.

(33) NESHAP for Organic Liquids Distribution (Non-Gasoline) Facilities (40 CFR Part 63, Subpart EEEE); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1963.05, OMB Control Number 2060–0539; expiration date September 30, 2013.

(34) NESHAP for Gasoline Distribution Facilities (40 CFR Part 63, Subpart R); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1659.08, OMB Control Number 2060–0325; expiration date September 30, 2013.

(35) NESHAP for Stationary Combustion Turbines (40 CFR Part 63, Subpart YYYY); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1967.05, OMB Control Number 2060–0540; expiration date September 30, 2013.

(36) NESHAP for Automobile and Light-duty Truck Surface Coating (40 CFR Part 63, Subpart IIII); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 2045.05, OMB Control Number 2060–0550; expiration date September 30, 2013.

(37) NESHAP for Petroleum Refineries, Catalytic Cracking, Reforming and Sulfur Units (40 CFR Part 63, Subpart UUU); Learia Williams of the Office of Compliance (202) 564–4113 or via Email to: *williams.learia@epa.gov;* EPA ICR Number 1844.05, OMB Control Number 2060–0554; expiration date September 30, 2013.

D. Information for Individual ICRs

(1) NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M); Docket ID Number: EPA–HQ–OECA–2012–0659, EPA ICR Number 1415.10; OMB Control Number 2060–0234; expiration date March 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of perchloroethylene dry cleaning facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart M.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 50 hours per response.

Respondents/Affected Entities: Owners or operator of perchloroethylene dry cleaning facilities.

Estimated Number of Respondents: 28,012.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,531,851.

Estimated Total Annual Cost: $150,708,638, which includes $149,772,225 in labor costs, $582,500 in capital/startup costs, and $353,913 in operating and maintenance costs.

(2) Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (40 CFR Part 60, Subpart Cc and 40 CFR Part 62, Subpart GGG); Docket ID Number: EPA–HQ–OECA–2012–0680; EPA ICR Number

1893.06; OMB Control Number 2060–0430; expiration date March 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of municipal solid waste landfills.

Abstract: The affected entities are subject to the General Provisions of the Emission Guidelines at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart Cc and part 62, Subpart GGG.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required monthly.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response.

Respondents/Affected Entities: Owners or operator of municipal solid waste landfills.

Estimated Number of Respondents: 559.

Frequency of Response: Monthly, quarterly, and annually.

Estimated Total Annual Hour Burden: 46,146.

Estimated Total Annual Cost: $3,956,321, which includes $3,229,721 in labor costs, no capital/startup costs, and $726,600 in operating and maintenance costs.

(3) NESHAP for Taconite Iron Ore Processing (40 CFR Part 63, Subpart RRRRR); Docket ID Number: EPA–HQ–OECA–2012–0693; EPA ICR Number 2050.05; OMB Control Number 2060–0538; expiration date March 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of taconite iron ore processing plants.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart RRRRR.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 22 hours per response.

Respondents/Affected Entities: Owners or operator of taconite iron ore processing plants.

Estimated Number of Respondents: 8.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 651.

Estimated Total Annual Cost: $1,012,546, which includes $754,946 in labor costs, no capital/startup costs, and $257,600 in operating and maintenance costs.

(4) NSPS for Steel Plants: Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR Part 60, Subparts AA and AAa); Docket ID Number: EPA–HQ–OECA–2012–0653; EPA ICR Number 1060.16; OMB Control Number 2060–0038; expiration date March 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of electric arc furnaces and argon oxygen decarbonization vessels.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subparts AA and AAa.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 308 hours per response.

Respondents/Affected Entities: Owners or operator of electric arc furnaces and argon oxygen decarbonization vessels.

Estimated Number of Respondents: 98.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 60,745.

Estimated Total Annual Cost: $5,911,975, which includes $5,712,985 in labor costs, $5,490 in capital/startup costs, and $193,500 in operating and maintenance costs.

(5) NESHAP for Prepared Feeds Manufacturing (40 CFR Part 63, Subpart DDDDDDD); Docket ID Number: EPA–HQ–OECA–2012–0703; EPA ICR Number 2354.03; OMB Control Number 2060–0635; expiration date March 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of prepared feed manufacturing facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart DDDDDDD.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required annually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response.

Respondents/Affected Entities: Owners or operator of prepared feed manufacturing facilities.

Estimated Number of Respondents: 1,800.

Frequency of Response: Initially and annually.

Estimated Total Annual Hour Burden: 22,179.

Estimated Total Annual Cost: $1,760,711, which includes $1,734,260 in labor costs, $13,843 in capital/startup costs, and $12,608 in operating and maintenance costs.

(6) NESHAP for Chemical Preparations Industry (40 CFR Part 63, Subpart BBBBBBB); Docket ID Number: EPA–HQ–OECA–2012–0642; EPA ICR Number 2356.03; OMB Control Number 2060–0636; expiration date March 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of area source facilities that manufacture chemical preparations.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart BBBBBBB.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or

operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 46 hours per response.

Respondents/Affected Entities: Owners or operator of area source facilities that manufacture chemical preparations.

Estimated Number of Respondents: 26.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 2,372.

Estimated Total Annual Cost: $175,618, which includes $175,098 in labor costs, no capital/startup costs, and $520 in operating and maintenance costs.

(7) NSPS for Ammonium Sulfate Manufacturing Plants (40 CFR Part 60, Subpart PP); Docket ID Number: EPA–HQ–OECA–2012–0655, EPA ICR Number 1066.07; OMB Control Number 2060–0032, expiration date April 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of ammonium sulfate manufacturing plants.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart PP.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours per response.

Respondents/Affected Entities: Owners or operator of ammonium sulfate manufacturing plants.

Estimated Number of Respondents: 2.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 247.

Estimated Total Annual Cost: $23,183, which includes $23,183 in labor costs, no capital/startup costs, and no operating and maintenance costs.

(8) NESHAP for Area Sources: Polyvinyl Chloride and Copolymer Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium; Docket ID Number: EPA–HQ–OECA–2012–0702; EPA ICR Number 2240.04; OMB Control Number 2060–0596; expiration date May 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of primary copper smelter, a new secondary copper smelter, a new or existing primary zinc production facility or a primary beryllium production facility that is an area source of hazardous air pollutant (HAP) emissions.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subparts DDDDDDD, EEEEEEE, FFFFFFF, and GGGGGGG.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required annually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 12 hours per response.

Respondents/Affected Entities: Owners or operator of primary copper smelter, a new secondary copper smelter, a new or existing primary zinc production facility or a primary beryllium production facility that is an area source of HAP emissions.

Estimated Number of Respondents: 5.

Frequency of Response: Initially.

Estimated Total Annual Hour Burden: 46.

Estimated Total Annual Cost: $4,326, which includes $4,326 in labor costs, no capital/startup costs, and no operating and maintenance costs.

(9) NESHAP for Mercury Cell Chlor-Alkali Plants (40 CFR Part 63, Subpart IIIII); Docket ID Number: EPA–HQ–OECA–2012–0691; EPA ICR Number 2046.07; OMB Control Number 2060–0542; expiration date May 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of mercury cell chlor-alkali plants.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart IIIII.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required annually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 809 hours per response.

Respondents/Affected Entities: Owners or operator of mercury cell chlor-alkali plants.

Estimated Number of Respondents: 4.

Frequency of Response: Initially, daily, monthly, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 14,557.

Estimated Total Annual Cost: $1,491,978, which includes $1,418,178 in labor costs, no capital/startup costs, and $73,800 in operating and maintenance costs.

(10) NESHAP for Primary Magnesium Refining (40 CFR Part 63, Subpart TTTTT); Docket ID Number: EPA–HQ–OECA–2012–0699; EPA ICR Number 2098.06; OMB Control Number 2060–0536; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of primary magnesium refining facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart TTTTT.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is

inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 153 hours per response.

Respondents/Affected Entities: Owners or operator of primary magnesium refining facilities.

Estimated Number of Respondents: 1.

Frequency of Response: Occasionally and semiannually.

Estimated Total Annual Hour Burden: 611.

Estimated Total Annual Cost: $52,991, which includes $51,791 in labor costs, no capital/startup costs, and $1,200 in operating and maintenance costs.

(11) NESHAP for the Printing and Publishing Industry (40 CFR Part 63, Subpart KK); Docket ID Number: EPA–HQ–OECA–2012–0666; EPA ICR Number 1739.07; OMB Control Number 2060–0335; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of printing and publishing facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart KK.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 95 hours per response.

Respondents/Affected Entities: Printing and publishing industry.

Estimated Number of Respondents: 352.

Frequency of Response: Initially, annually, and semiannually.

Estimated Total Annual Hour Burden: 58,215.

Estimated Total Annual Cost: $5,888,997, which includes $5,474,997 in labor costs, no capital/startup costs, and $414,000 in operating and maintenance costs.

(12) NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR Part 60, Subpart RR); Docket ID Number: EPA–HQ–OECA–2012–0643; EPA ICR Number 0658.11; OMB Control Number 2060–0004; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of pressure sensitive tape and label surface coating operations.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart RR.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25 hours per response.

Respondents/Affected Entities: Owners or operator of pressure sensitive tape and label surface coating operations.

Estimated Number of Respondents: 37.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 3,353.

Estimated Total Annual Cost: $387,141, which includes $315,341 in labor costs, $7,000 in capital/startup costs, and $64,800 in operating and maintenance costs.

(13) NESHAP for Oil and Natural Gas Production (40 CFR Part 63, Subpart HH); Docket ID Number: EPA–HQ–OECA–2012–0669; EPA ICR Number 1788.10; OMB Control Number 2060–0417; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of oil and natural gas production facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart HH.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 75 hours per response.

Respondents/Affected Entities: Oil and natural gas production.

Estimated Number of Respondents: 132,527.

Frequency of Response: Initially, annually, and semiannually.

Estimated Total Annual Hour Burden: 178,975.

Estimated Total Annual Cost: $17,243,906, which includes $16,649,703 in labor costs, $23,445 in capital/startup costs, and $570,758 in operating and maintenance costs.

(14) NESHAP for Site Remediation (40 CFR Part 63, Subpart GGGGG); Docket ID Number: EPA–HQ–OECA–2012–0695; EPA ICR Number 2062.05; OMB Control Number 2060–0534; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of site remediation facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart GGGGG.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 219 hours per response.

Respondents/Affected Entities: Owners or operator of site remediation facilities.

Estimated Number of Respondents: 286.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 112,349.

Estimated Total Annual Cost: $11,378,331, which includes $10,796,331 in labor costs, no capital/startup costs, and $582,000 in operating and maintenance costs.

(15) NESHAP for Plastic Parts and Products Surface Coating (40 CFR Part 63, Subpart PPPP); Docket ID Number: EPA–HQ–OECA–2012–0688; EPA ICR Number 2044.05; OMB Control Number 2060–0537; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of plastic parts and products surface coating facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart PPPP.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 hours per response.

Respondents/Affected Entities: Plastic parts and products surface coating facilities.

Estimated Number of Respondents: 828.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 320,917.

Estimated Total Annual Cost: $27,444,633, which includes $27,180,233 in labor costs, $16,000 in capital/startup costs, and $248,400 in operating and maintenance costs.

(16) NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants (40 CFR Part 60, Subpart PPP and 40 CFR Part 63, Subpart NNN); Docket ID Number: EPA–HQ–OECA–2012–0658; EPA ICR Number 1160.11; OMB Control Number 2060–0114; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of wool fiberglass insulation manufacturing facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS/NESHAP at 40 CFR part 60, subpart A and part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart PPP and part 63, subpart NNN.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required annually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response.

Respondents/Affected Entities: Owners or operator of wool fiberglass manufacturing facilities.

Estimated Number of Respondents: 2.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 18,591.

Estimated Total Annual Cost: $2,247,973, which includes $1,759,473 in labor costs, no capital/startup costs, and $488,500 in operating and maintenance costs.

(17) NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR Part 60, Subpart FFF); Docket ID Number: EPA–HQ–OECA–2012–0657; EPA ICR Number 1157.10; OMB Control Number 2060–0073; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of flexible vinyl and urethane coating and printing operations facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart FFF.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response.

Respondents/Affected Entities: Owners or operator of flexible vinyl and urethane coating and printing operations facilities.

Estimated Number of Respondents: 20.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 594.

Estimated Total Annual Cost: $242,431, which includes $55,831 in labor costs, $6,600 in capital/startup costs, and $180,000 in operating and maintenance costs.

(18) NSPS for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction or Modification Commenced after June 11, 1973, and prior to May 19, 1978 (40 CFR Part 60, Subpart K); Docket ID Number: EPA–HQ–OECA–2012–0677; EPA ICR Number 1797.06; OMB Control Number 2060–0442; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of petroleum liquid storage vessels.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart K.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response.

Respondents/Affected Entities: Owners or operator of petroleum liquid storage vessels.

Estimated Number of Respondents: 220.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 769.

Estimated Total Annual Cost: $72,750, which includes $72,750 in labor costs, no capital/startup costs, and no operating and maintenance costs.

(19) NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart CCCC); Docket ID Number: EPA–HQ–OECA–2012–0681; EPA ICR Number 1926.06; OMB Control Number 2060–0450; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or

operators of commercial and industrial solid waste incineration units.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart CCCC.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 239 hours per response.

Respondents/Affected Entities: Owners or operator of commercial and industrial solid waste incineration units.

Estimated Number of Respondents: 31.

Frequency of Response: Initially, occasionally, semiannually, and annually.

Estimated Total Annual Hour Burden: 11,246.

Estimated Total Annual Cost: $1,029,921, which includes $1,021,351 in labor costs, $2,240 in capital/startup costs, and $6,330 in operating and maintenance costs.

(20) NSPS for Nitric Acid Plants (40 CFR Part 60, Subpart G); Docket ID Number: EPA–HQ–OECA–2012–0645; EPA ICR Number 1056.11; OMB Control Number 2060–0019; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of nitric acid plants.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart G.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response.

Respondents/Affected Entities: Owners or operator of nitric acid plants.

Estimated Number of Respondents: 24.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,291.

Estimated Total Annual Cost: $2,549,639, which includes $81,639 in labor costs, $68,000 in capital/startup costs, and $2,400,000 in operating and maintenance costs.

(21) NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR Part 60, Subpart MM); Docket ID Number: EPA–HQ–OECA–2012–0654; EPA ICR Number 1064.17; OMB Control Number 2060–0034; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of automobile and light duty truck surface coating operations facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart MM.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 483 hours per response.

Respondents/Affected Entities: Owners or operator of automobile and light duty truck surface coating operations facilities.

Estimated Number of Respondents: 54.

Frequency of Response: Initially, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 156,362.

Estimated Total Annual Cost: $14,882,842, which includes $14,790,142 in labor costs, $1,700 in capital/startup costs, and $91,000 in operating and maintenance costs.

(22) NSPS for Lead-Acid Battery Manufacturing (40 CFR Part 60, Subpart KK); Docket ID Number: EPA–HQ–OECA–2012–0656; EPA ICR Number 1072.10; OMB Control Number 2060–0081; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of lead acid battery manufacturing facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart KK.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required annually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours per response.

Respondents/Affected Entities: Owners or operator of lead acid battery manufacturing facilities.

Estimated Number of Respondents: 52.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 4,053.

Estimated Total Annual Cost: $395,346, which includes $383,346 in labor costs, no capital/startup costs, and $12,000 in operating and maintenance costs.

(23) NESHAP for Miscellaneous Coating Manufacturing (40 CFR Part 63, Subpart HHHHH); Docket ID Number: EPA–HQ–OECA–2012–0701; EPA ICR Number 2115.04; OMB Control Number 2060–0535; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of miscellaneous coating manufacturing facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart HHHHH.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or

malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 296 hours per response.

Respondents/Affected Entities: Owners or operators of miscellaneous coating manufacturing facilities.

Estimated Number of Respondents: 133.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 167,572.

Estimated Total Annual Cost: $17,007,914, which includes $14,192,714 in labor costs, $30,000 in capital/startup costs, and $2,785,200 in operating and maintenance costs.

(24) NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (40 CFR Part 63, Subparts AA and BB); Docket ID Number: EPA–HQ–OECA–2012–0676; EPA ICR Number 1790.06; OMB Control Number 2060–0361; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of phosphoric acid manufacturing and phosphate fertilizers production facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subparts AA and BB.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response.

Respondents/Affected Entities: Owners or operator of phosphoric acid manufacturing and phosphate fertilizers production facilities

Estimated Number of Respondents: 12.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 1,534.

Estimated Total Annual Cost: $154,929, which includes $144,297 in labor costs, no capital/startup costs, and $10,632 in operating and maintenance costs.

(25) NESHAP for Flexible Polyurethane Foam Product (40 CFR Part 63, Subpart III); Docket ID Number: EPA–HQ–OECA–2012–0668, EPA ICR Number 1783.06; OMB Control Number 2060–0357; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of flexible polyurethane foam product facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart III.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 43 hours per response.

Respondents/Affected Entities: Owners or operator of flexible polyurethane foam product facilities.

Estimated Number of Respondents: 132.

Frequency of Response: Initially, occasionally, semiannually, and annually.

Estimated Total Annual Hour Burden: 9,047.

Estimated Total Annual Cost: $850,851, which includes $850,851 in labor costs, no capital/startup costs, and no operating and maintenance costs.

(26) Emission Guidelines for Existing Commerce and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart DDDD); Docket ID Number: EPA–HQ–OECA–2012–0685; EPA ICR Number 1927.06; OMB Control Number 2060–0451; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of commercial and industrial solid waste incineration units.

Abstract: The affected entities are subject to the General Provisions of the Emission Guidelines at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart DDDD.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 232 hours per response.

Respondents/Affected Entities: Owners or operator of commercial and industrial solid waste incineration units.

Estimated Number of Respondents: 97.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 31,619.

Estimated Total Annual Cost: $2,904,577, which includes $2,884,110 in labor costs, no capital/startup costs, and $20,467 in operating and maintenance costs.

(27) NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (40 CFR Part 63, Subpart T); Docket ID Number: EPA–HQ–OECA–2012–0660; EPA ICR Number 1652.08; OMB Control Number 2060–0273; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of halogenated solvent cleaners.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart T.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is

inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 hours per response.

Respondents/Affected Entities: Halogenated solvent cleaners.

Estimated Number of Respondents: 1,431.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 41,035.

Estimated Total Annual Cost: $4,992,717, which includes $3,977,917 in labor costs, no capital/startup costs, and $1,014,800 in operating and maintenance costs.

(28) NESHAP for Magnetic Tape Manufacturing Operations (40 CFR Part 63, Subpart EE); Docket ID Number: EPA–HQ–OECA–2012–0665; EPA ICR Number 1678.08; OMB Control Number 2060–0326; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of magnetic tape manufacturing operations.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart EE.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response.

Respondents/Affected Entities: Magnetic tape manufacturing operations.

Estimated Number of Respondents: 6.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 3,396.

Estimated Total Annual Cost: $366,607, which includes $319,607 in labor costs, $11,000 in capital/startup costs, and $36,000 in operating and maintenance costs.

(29) NESHAP for Mineral Wool Production (40 CFR Part 63, Subpart DDD); Docket ID Number: EPA–HQ–OECA–2012–0678; EPA ICR Number 1799.07; OMB Control Number 2060–0362; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of mineral wool production facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart DDD.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response.

Respondents/Affected Entities: Owners or operator of mineral wool production facilities.

Estimated Number of Respondents: 7.

Frequency of Response: Initially, semiannually and annually.

Estimated Total Annual Hour Burden: 1,688.

Estimated Total Annual Cost: $238,517, which includes $234,017 in labor costs, no capital/startup costs, and $4,500 in operating and maintenance costs.

(30) NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations (40 CFR Part 63, Subpart O); Docket ID Number: EPA–HQ–OECA–2012–0664; EPA ICR Number 1666.09; OMB Control Number 2060–0283; expiration date June 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of commercial ethylene oxide sterilization and fumigation operations.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart O.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 hours per response.

Respondents/Affected Entities: Owners or operator of commercial ethylene oxide sterilization and fumigation operations.

Estimated Number of Respondents: 119.

Frequency of Response: Initially, occasionally and semiannually.

Estimated Total Annual Hour Burden: 8,662.

Estimated Total Annual Cost: $1,467,301, which includes $819,301 in labor costs, $65,000 in capital/startup costs, and $583,000 in operating and maintenance costs.

(31) NSPS for Incinerators (40 CFR Part 60, Subpart E); Docket ID Number: EPA–HQ–OECA–2012–0646; EPA ICR Number 1058.11; OMB Control Number 2060–0040; expiration date August 31, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of incinerators.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart E.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response.

Respondents/Affected Entities: Incinerators.

Estimated Number of Respondents: 82.

Frequency of Response: Initially and occasionally.

Estimated Total Annual Hour Burden: 8,393.

Estimated Total Annual Cost: $998,858, which includes $793,858 in

labor costs, no capital/startup costs, and $205,000 in operating and maintenance costs.

(32) NESHAP for Iron and Steel Foundries (40 CFR Part 63, Subpart EEEEE); Docket ID Number: EPA–HQ–OECA–2012–0697; EPA ICR Number 2096.05; OMB Control Number 2060–0543; expiration date September 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of iron and steel foundries.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart EEEEE.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 151 hours per response.

Respondents/Affected Entities: Iron and steel foundries.

Estimated Number of Respondents: 98.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 29,747.

Estimated Total Annual Cost: $2,919,519, which includes $2,519,459 in labor costs, no capital/startup costs, and $400,060 in operating and maintenance costs.

(33) NESHAP for Organic Liquids Distribution (Non-Gasoline) Facilities (40 CFR Part 63, Subpart EEEE); Docket ID Number: EPA–HQ–OECA–2012–0686; EPA ICR Number 1963.05; OMB Control Number 2060–0539; expiration date September 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of organic liquids distribution facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart EEEE.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 114 hours per response.

Respondents/Affected Entities: Organic liquids distribution facilities.

Estimated Number of Respondents: 381.

Frequency of Response: Initially, occasionally, semiannually, and annually.

Estimated Total Annual Hour Burden: 85,503.

Estimated Total Annual Cost: $16,646,771, which includes $8,087,607 in labor costs, $1,636,864 in capital/startup costs, and $6,922,300 in operating and maintenance costs.

(34) NESHAP for Gasoline Distribution Facilities (40 CFR Part 63, Subpart R); Docket ID Number: EPA–HQ–OECA–2012–0662; EPA ICR Number 1659.08; OMB Control Number 2060–0325; expiration date September 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of gasoline distribution facilities that transfer and store gasoline, including pipeline breakout stations and bulk terminals.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart R.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 31 hours per response.

Respondents/Affected Entities: Owners or operators of gasoline distribution facilities that transfer and store gasoline, including pipeline breakout stations and bulk terminals.

Estimated Number of Respondents: 447.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 15,759.

Estimated Total Annual Cost: $1,847,584, which includes $1,490,584 in labor costs, no capital/startup costs, and $357,000 in operating and maintenance costs.

(35) NESHAP for Stationary Combustion Turbines (40 CFR Part 63, Subpart YYYY); Docket ID Number: EPA–HQ–OECA–2012–0687; EPA ICR Number 1967.05; OMB Control Number 2060–0540; expiration date September 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of stationary combustion turbines.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart YYYY.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response.

Respondents/Affected Entities: Stationary combustion turbines.

Estimated Number of Respondents: 31.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 435.

Estimated Total Annual Cost: $42,652, which includes $41,152 in labor costs, $1,500 capital/startup costs, and no operating and maintenance costs.

(36) NESHAP for Automobile and Light-duty Truck Surface Coating (40 CFR Part 63, Subpart IIII); Docket ID Number: EPA–HQ–OECA–2012–0690; EPA ICR Number 2045.05; OMB Control Number 2060–0550; expiration date September 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of automobile and light-duty truck surface coating facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart IIII.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 hours per response.

Respondents/Affected Entities: Owners or operator of automobile and light-duty truck surface coating facilities.

Estimated Number of Respondents: 65.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 25,190.

Estimated Total Annual Cost: $2,321,787, which includes $2,243,787 in labor costs, no capital/startup costs, and $78,000 in operating and maintenance costs.

(37) NESHAP for Petroleum Refineries: Catalytic Cracking Units, Reforming and Sulfur Units (40 CFR Part 63, Subpart UUU); Docket ID Number: EPA–HQ–OECA–2012–0679; EPA ICR Number 1844.05; OMB Control Number 2060–0554; expiration date September 30, 2013.

Affected Entities: Entities potentially affected by this action are the owners or operators of petroleum refineries.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart UUU.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 42 hours per response.

Respondents/Affected Entities: Owners or operators of petroleum refineries.

Estimated Number of Respondents: 132.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 11,040.

Estimated Total Annual Cost: $8,814,941, which includes $983,339 in labor costs, no capital/startup costs, and $7,831,602 in operating and maintenance costs.

EPA will consider any comments received and may amend any of the above ICRs, as appropriate. Then, the final ICR packages will be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue one or more **Federal Register** notices pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about any of the above ICRs or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 24, 2012.

Lisa C. Lund,

Director, Office of Compliance.

[FR Doc. 2012–25544 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0489; FRL–9364–2]

Cancellation of Pesticides for Non-Payment of Year 2012 Registration Maintenance Fees; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of July 27, 2012, concerning the cancellation of pesticides for non-payment of year 2012 registration maintenance fees. This document is being issued to correct Table 1 and Table 2 of the cancellation notice by removing six entries which were inadvertently included.

FOR FURTHER INFORMATION CONTACT: Michael Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the July 27, 2012, notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2012–0489. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov.*

II. What does this correction do?

This notice is being issued to correct Table 1 and Table 2 of the cancellation notice. This correction removes six entries which were inadvertently included.

FR Doc. 2012–18375 published in the **Federal Register** of July 27, 2012 (77 FR 44229) (FRL–9355–7) is corrected as follows:

1. On page 44230, in Table 1, remove the complete entry for: ''TX–11–0003.''
2. On page 44230, in Table 2, remove the complete entry for: ''51032–00014.''
3. On page 44231, in Table 2, remove the complete entry for: ''72468–00003,'' ''72468–00005,'' ''82744–00001,'' and ''82744–00002.''

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests.

Dated: September 25, 2012.

Michael Hardy,

Acting Director, Information Technology and Resource Management Division, Office of Pesticide Programs.

[FR Doc. 2012–24894 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9742–2]

Request for Nominations of Experts for the Clean Air Scientific Advisory Committee (CASAC) Oxides of Nitrogen Primary National Ambient Air Quality Standards (NAAQS) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for technical experts to form a CASAC ad hoc panel to provide advice through the chartered CASAC on primary (human health-based) air quality standards for oxides of nitrogen (NO_X).

DATES: Nominations should be submitted by November 7, 2012 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2073 or via email at *stallworth.holly@epa.gov.* General information concerning the EPA CASAC can be found at the EPA CASAC Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and National Ambient Air Quality Standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including oxides of nitrogen. As a Federal Advisory Committee, the CASAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists in the science of air pollution related to nitrogen oxides. Experts are sought in atmospheric science, human exposure, dosimetry, toxicology, epidemiology, medicine, public health, biostatistics and risk assessment.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above. Nominations should be submitted in electronic format (preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed,'' provided on the SAB Web site. If you wish to nominate yourself or another expert, please follow the instructions that can be accessed through the ''Nomination of Experts'' link on the blue navigational bar at the CASAC Web site *http://www.epa.gov/casac.* To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations. The bio-sketches and resume or curricula vitae of nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be made available to the public upon request.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the CASAC Web site, should contact Dr. Holly Stallworth, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than November 7, 2012. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and bio-sketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the CASAC Web site at *http://www.epa.gov/casac.* Public comments on this List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which includes membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: October 5, 2012.

Thomas Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–25546 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9365–9]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a February 29, 2012 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the February 29, 2012 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective October 17, 2012.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014 is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of 25 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA registration No.	Product name	Chemical name
000577–00539	Semi-transparent Wood Preservative Stain A14T5.	Folpet, Tributyltin oxide.
000577–00544	Cuprinol Stain and Wood Preservative	Tributyltin oxide, Chlorothalonil.
000707–00120	Kathon 4200 Fabric Mildewcide	Octhilinone.
001448–00315	B–7–16	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
001529–00029	Nuosept 635–W Preservative	Alkyl amine hydrochloride.
001529–00030	Fungitrol 158 Fungicide	Alkyl* amine hydrochloride *(as in fatty acids of coconut oil), Tributyltin benzoate.
002829–00127	Vinyzene IT–3000 DIDP	Octhilinone.
002829–00139	Vinyzene DP 7000	Triclosan.
002829–00145	Vinyzene SB–30	Triclosan.
004822–00429	Waste Minders with Stangard/4	Triclosan.
007313–00006	Olympic Clear Wood Preservative	Tributyltin oxide, Folpet.
007364–00022	Algimycin Winter Algicide	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
007364–00093	Poolcare Algastop	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
047371–00084	Formulation HL–138D	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12), Tributyltin oxide.
053883–00259	Termini 9.1 SC	Fipronil.
CO080003	Endura Fungicide	Boscalid.
MD080002	Ridomil Gold Copper	Copper hydroxide D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester.
OR000023	Daconil SDG	Chlorothalonil.
WA000003	Daconil SDG	Chlorothalonil.
WA030013	Thiodan 3 EC Insecticide	Endosulfan.
WA030017	Thionex 50W Insecticide	Endosulfan.
WA030018	Thiodan 3 EC Insecticide	Endosulfan.
WA060006	Outlook Herbicide	dimethenamide-P.
WA060018	Prowl H2O Herbicide	Pendemethalin.
WA860012	Furadan 15 G Insecticide-Nemanticide	Carbofuran.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
577	The Sherwin-Williams Co., 101 Prospect Avenue, Cleveland, OH 44115.
707	Rohm & Haas Co., 100 Independence Mall, West Philadelphia, PA 19106.
1448	Buckman Laboratories Inc., 1256 North Mclean Boulevard, Memphis, TN 38108.
1529	International Specialty Products, 1361 Alps Road, Wayne, NJ 07470.
2829	Rohm and Haas Company, 100 S Independence Mall West, STE 1A, Philadelphia, PA 19106.
4822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
7313	PPG Architectural Finishes Inc., 1 PPG Place, Pittsburgh, PA 15272.
7364	GLB Pool & Spa, W175 N11163 Stonewood Drive, Suite 234, Germantown, WI 53022.
47371	H & S Chemical Division, 90 Boroline Road, Allendale, NJ 07401.
53883	Control Solutions Inc., 5903 Genoa-Red Bluff Road, Pasadena, TX 77507.
MD080002	Syngenta Crop Protection, LLC, D/B/A Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300.
OR000023; WA000003.	GB Biosciences Corporation, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–5458.
WA030013; WA030017; WA030018.	Makhteshim-Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
WA060006; WA060018; CO080003.	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
WA860012	FMC Corp., Agricultural Products Group, 1735 Market, Room 1978, Philadelphia, PA 19103.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the February 29, 2012 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II. In addition, five pesticide products listed in the February 29, 2012 **Federal Register** notice announcing the requests for voluntary cancellations were previously cancelled under separate cancellation orders. EPA Reg. Nos. 000322–00008, 001677–00199, 008177–00071, 010807–00447, and 035975–00004 were previously canceled under separate **Federal Register** Notices. The following table lists each product by FRL No. and date of cancellation.

TABLE 3—PRODUCTS CANCELLED IN PREVIOUS PUBLICATIONS

EPA registration No.	Docket No.	**Federal Register** date and No.
000322–00008 008177–00071 035975–00004	EPA–HQ–OPP–2012–0489	7/27/12 (77 FR 44229) (FRL–9355–7)
001677–00199	EPA–HQ–OPP–2012–0014	8/31/11 (76 FR 54230) (FRL–8885–6)
010807–00447 *	EPA–HQ–OPP–2009–1017	2/15/12 (77 FR 12299) (FRL–9336–2)

* **Note:** EPA Reg. No. 010807–00447 was corrected on 8/31/12 (77 FR 53198) (FRL–9357–6) to include this number in the **Federal Register** instead of 010807–00448 that was made in error.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are the subject of this notice is October 17, 2012. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. below, will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of February 29, 2012 (77 FR 12299) (FRL–9336–2). The comment period closed on August 27, 2012.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

A. Registrations Listed in Table 1 of Unit II Except for Registration No. WA860012

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II., except for Furadan 15 G Insecticide Nemanticide, with Registration No. WA860012, until October 17, 2013, which is 1 year after the publication of

the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II., except for Furadan 15 G Insecticide Nemanticide, with Registration No. WA860012, until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

B. Registration No. WA860012

The effective date of cancellation of Furadan 15 G Insecticide-Nemanticide, Registration No. WA860012 is October 17, 2012. Continued sale and distribution of existing stocks of this product is no longer allowed. Registrants are prohibited from selling and/or distributing this product except for export consistent with FIFRA section 7 or for proper disposal.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 5, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–25426 Filed 10–16–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2012–0531]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 92–53 Small Business Multi-Buyer Export Credit Insurance Policy Enhanced Assignment of Policy Proceeds.

SUMMARY: The Export-Import Bank of the U.S. (Ex-Im Bank) pursuant to the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635, *et seq.*), facilitates the finance of export of U.S. goods and services. By neutralizing the effect of export credit insurance and guarantees offered by foreign governments and by absorbing credit risks that the private sector will not accept, Ex-Im Bank enables U.S. exporters to compete fairly in foreign markets on the basis of price and product. This collection of information is used by exporters to convey legal rights to, and describe the duties and obligations that have to be met by their financial institution lender in order to share insurance policy proceeds from Ex-Im Bank approved insurance claims.

The changes that were made to this agreement include language clarifications and changes to the descriptions of the rights and obligations of the parties to the agreement. The changes were made to provide clarity and specificity for exporters/lenders based on issues that have arisen through either exporter/lender inquiries or interpretations made during processing of claims. The language of the existing agreement frequently results in improper documentation by our lender partners which increases claim processing times and causes significant resource burdens to Ex-Im Bank. The language in the existing agreement also creates the potential for fraud, resulting in losses to Ex-Im Bank. Recent changes to the Ex-Im Bank Charter (12 U.S.C. 635(i)(2)(i) and a–6(b)) mandate that Ex-Im Bank must develop practices to identify, prevent and monitor for potential fraud. Therefore changes to the agreement were required to comply with this mandate and protect the U.S. taxpayer from fraud related loss. In addition, the changes to this agreement protect Ex-Im Bank's lender partners who are parties to the agreement, allowing us to maintain our relationships with our lender partners, and fulfill our agency mission to finance exports (through our lender partners) and create jobs. Due to the Ex-Im Bank Charter mandate to reduce fraud, the changes in the form need to be immediately disseminated to exporters/lenders so that they can change practices where needed, especially where documentation of export transactions is involved.

This application can be viewed at *www.exim.gov/pub/pending/EIB92-53.PDF.*

DATES: Comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Comments may be submitted through *www.regulations.gov* or mailed to Walter Kosciow, Export Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–53 Small Business Multi-Buyer Export Credit Insurance Policy Enhanced Assignment of Policy Proceeds.

OMB Number: 3048–XXXX.

Type of Review: New.

Need and Use: The form represents the exporter's directive to Ex-Im Bank to whom and where the insurance proceeds should be sent, and also describes the duties and obligations that have to be met by the financial institution in order to share in the policy proceeds. The form is typically part of the documentation required by financial institution lenders in order to provide financing of an exporter's foreign accounts receivable. Foreign accounts receivable insured by Ex-Im Bank represent stronger collateral to secure the financing. By recording which policyholders have completed this form, Ex-Im Bank is able to determine how many of its exporter policyholders require Ex-Im Bank insurance policies to support lender financing.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Estimated respondents per year.	110.
Frequency of Responses	yearly.
Estimated hours per response	15 minutes.
Estimated annual burden hours.	27.5 hours.
Reviewing time in hours	1 hour.
Responses per year	110.
Review time per year	110 hours.
Average wages per hour	$32.50.
Average cost per year	$3,575.00.
Benefits and Overhead	28%—$1000.
Total Government Cost	$4,575.00.

The annual cost to the Government would be $4,575.00.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–25508 Filed 10–16–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–1616]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (Committee). The purpose of the Committee is to make recommendations to the Commission regarding matters within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The next meeting of the Committee will take place on Friday,

November 2, 2012, 9:00 a.m. to 4:00 p.m., at the Commission's Headquarters Building, Commission Meeting Room, TW–C305.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (Voice or Relay), or email *Scott.Marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 12–1616 released October 11, 2012, announcing the agenda, date and time of the Committee's next meeting.

Meeting Agenda

At its November 2, 2012 meeting, it is expected that the Committee will consider a recommendation from its Disability Working Group concerning updating of the Commission's rules regarding Speech-to-Speech Relay Service (including implementation of video Speech-to-Speech Relay Service). A second recommendation for the Committee's consideration, also proposed by its Disability Working Group, urges the Commission to include people with disabilities, low income, and underserved populations in its Mobile Health (mHealth) initiative. In addition, the Committee's Media Working Group is expected to offer a recommendation to the Committee regarding disclosure in political advertising. The Committee may also consider other recommendations from its working groups, and may also receive briefings from FCC staff and outside speakers on matters of interest to the Committee. A limited amount of time will be available on the agenda for questions and comments from the public.

Meetings of the Committee are also broadcast live with open captioning over the Internet from the FCC Live web page at *www.fcc.gov/live/*.

Simultaneous with the webcast, the meeting will be available through Accessible Event, a service that works with a web browser to make presentations accessible to people with disabilities. Persons wishing to attend through Accessible Event can listen to the audio and use a screen reader to read displayed documents, and can watch the video with open captioning. The Web site to access Accessible Event is *http://accessibleevent.com*. The web page prompts for an Event Code which is: 005202376. To learn about the features of Accessible Event, consult its User's Guide at: *http://accessibleevent.com/doc/user_guide/*.

The public may ask questions of presenters via email at *livequestions@fcc.gov* or via Twitter using the hashtab #fcclive. In addition, the public may also follow the meeting on Twitter @fcc or via the Commission's Facebook page at *www.facebook.com/fcc*.

Alternatively, written comments to the Committee may be sent to: Scott Marshall, Designated Federal Officer of the Committee at the address provided above.

The meeting is open to the public and the site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Kris Anne Monteith,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–25565 Filed 10–16–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011502–005.

Title: NYK/HUAL Space Charter and Cooperative Working Agreement.

Parties: Hoegh Autoliners AS and Nippon Yusen Kaisha (''NYK'').

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment clarifies that the agreement covers U.S. export trades only, adds Libya and Lebanon to the geographic scope of the agreement, and corrects the U.S. address of Hoegh Autoliners.

Agreement No.: 011741–018.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: A.P. Moller-Maersk A/S; ANL Singapore PTE Ltd./CMA CGM S.A.; Hamburg-Sud; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would adjust the minimum and maximum size of vessels which can be deployed by the parties.

By Order of the Federal Maritime Commission.

Dated: October 12, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–25568 Filed 10–16–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 30, 2012.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Thomas Galt Atwood, Glen Ellen, California, and Cypress Abbey Company, Colma, California:* to retain 10 percent or more of the outstanding shares of capital stock of FNB Bancorp, and thereby indirectly retain 10 percent or more of the voting shares of First National Bank of Northern California, both of South San Francisco, California.

Board of Governors of the Federal Reserve System, October 12, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–25511 Filed 10–16–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *VisionBankshares, Inc.,* Boone, Iowa; to become a bank holding company by merging with Ogden Bancshares, Inc., Boone, Iowa, and thereby indirectly acquire voting shares of Ames Community Bank, Ames, Iowa.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Freeport Bancshares, Inc., Argonia, Kansas;* to become a bank holding company by acquiring 100 percent of the voting shares of Freeport State Bank, Harper, Kansas.

2. *Legacy Financial, Inc., Johnson, Kansas;* to become a bank holding company by acquiring 100 percent of the outstanding voting shares of First National Bank of Syracuse, Syracuse, Kansas.

Board of Governors of the Federal Reserve System, October 12, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–25512 Filed 10–16–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 102 3252]

Equifax Information Services LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 9, 2012.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/equifaxinfoservicesconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Equifax Info Services, File No. 102 3252'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/equifaxinfoservicesconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katherine Armstrong (202–326–3250), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 10, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 9, 2012. Write ''Equifax Info Services, File No. 102 3252'' on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which * * * is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a

request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/equifaxinfoservicesconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Equifax Info Services, File No. 102 3252'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 9, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Equifax Information Services LLC (''Equifax'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

According to the Commission's proposed complaint Equifax is a ''consumer reporting agency'' (''CRA'') that sells ''prescreened lists,'' which are lists of consumers that meet certain pre-selected criteria such as consumers who were, among other things, 30, 60, or 90 days late on their mortgage payments. Such prescreened lists are ''consumer reports'' because information such as whether a consumer is 30, 60, or 90 days late on a mortgage payment bears on, among other things, a consumer's credit worthiness and credit standing and is used or expected to be used as a factor in determining a consumer's eligibility for credit. The only permissible purpose under the Fair Credit Reporting Act (''FCRA'') for using a prescreened list is to make a ''firm offer of credit or insurance.'' A firm offer of credit is one that will be honored, subject to limited exceptions, if the consumer continues to meet the selection criteria.

First, the Commission's proposed complaint alleges that Equifax violated Section 604(c) of the FCRA by furnishing consumer reports to persons that it did not have reason to believe had a permissible purpose to obtain a consumer report. The proposed complaint alleges that from January 1, 2008 through early 2010, Equifax sold prescreened lists to Direct Lending Source, Inc. or its affiliates, Bailey & Associates Advertising, Inc. and Virtual Lending Source, LLC (collectively ''Direct Lending'') which included, among other things, consumers' credit scores and whether they were 30, 60, or 90 days late on their mortgage payments. The proposed complaint further alleges that in many instances, Direct Lending did not have a permissible purpose to obtain consumer reports under the FCRA but rather, Direct Lending used and sold these lists for the purpose of marketing products and services to consumers in financial distress. For example, the complaint alleges Direct Lending sold lists to marketers for the purpose of targeting consumers in financial distress for loan modification, debt relief, and foreclosure relief services.

Second, the proposed complaint alleges that Equifax violated Section 607(a) of the FCRA by failing to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under section 604(c) of the FCRA, failing to make reasonable efforts to verify the identity of each new prospective user of consumer report information, and failing to make reasonable efforts to verify the uses certified by each prospective user prior to furnishing such user a consumer report. According to the proposed complaint, Equifax failed to maintain reasonable procedures to limit the furnishing of the prescreened lists it sold to Direct Lending by: (1) Failing to investigate promptly or fully on certain occasions when it learned that Direct Lending was violating Equifax's internal policies relating to prescreening; and (2) furnishing prescreened lists to Direct Lending although it knew or should have known that Direct Lending resold the prescreened lists, in multiple instances, without identifying the end user to Equifax. The complaint alleges that, given Direct Lending's failures, Equifax had reason to believe that the entities to whom its prescreened lists were being sold did not have a permissible purpose for obtaining the lists. Nonetheless, Equifax continued to sell prescreened lists to Direct Lending. The proposed complaint further alleges that Equifax provided prescreened lists to Direct Lending through an online portal and also provided access to the portal to third parties in connection with Direct Lending's prescreening operations, but did not make reasonable efforts to verify the identity of these entities, and accordingly, could not ensure that these entities would only use the lists for a permissible purpose.

Finally, the proposed complaint also alleges Equifax violated Section 5(a) of the FTC Act by failing to employ reasonable and appropriate measures to control access to the sensitive consumer financial information it maintains and sells for prescreening services. The complaint alleges that Equifax's failures resulted in prescreened lists being sold to a number of entities that were ultimately the subject of actions or warnings by law enforcement and that Equifax's lack of reasonable procedures caused or is likely to cause substantial consumer injury that is not reasonably avoidable by consumers and is not outweighed by benefits to consumers or competition.

The proposed order contains provisions designed to prevent Equifax from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Equifax from: (1) Furnishing a prescreened list to any person which Equifax does not have reason to believe has a permissible purpose under section 604(c) of the FCRA; (2) failing to maintain reasonable procedures designed to limit the furnishing of prescreened lists to the purposes listed

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

under section 604(c) of the FCRA; and (3) furnishing consumer reports pursuant to section 604(c) of the FCRA, in connection with solicitations for debt relief products or services, or mortgage assistance relief products or services offered by entities that respondent has reasonable grounds for believing charge advance fees for such services, unless: (a) The product or service is the refinancing of a dwelling loan; or (b) the entity offering the product or service is an attorney.

Part II of the proposed order requires Equifax to pay $392,803 in disgorgement.

Part III through VII of the proposed order are reporting and compliance provisions. Part III requires that Equifax retain for a period of five (5) years: (1) Files containing the names, addresses, telephone numbers, and all certifications made by persons seeking to obtain prescreened lists from Equifax in order to finance the product or service provided by a third party, and all materials considered by Equifax in connection with its verification of the identity of those persons and verification of the certifications made by those persons; (2) copies of all training materials and marketing materials that relate to Equifax's prescreening activities as alleged in the complaint and Equifax's compliance with the provisions of this order; and (3) all records necessary to demonstrate full compliance with each provision of this order, including all submissions to the Commission.

Part IV requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that Equifax submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–25563 Filed 10–16–12; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Docket 2012–0001; Sequence 13; OMB Control NO. 3090–0283]

Office of the Chief Information Officer; Submission for OMB Review; Temporary Contractor Information Worksheet

AGENCY: Identity, Credential, and Access Management (ICAM) Division, Office of Enterprise Solutions (IA), Office of the Chief Information Officer (OCIO), General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding temporary contractor information worksheet. A notice was published in the **Federal Register** at 77 FR 40884, on July 11, 2012. No comments were received.

GSA requires OMB approval for this collection to make determinations on granting unescorted physical access to GSA-controlled facilities. The approval is critical for GSA to continue to make physical access determinations for temporary contractors as a result of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5).

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: November 16, 2012.

ADDRESSES: Submit comments identified by Information Collection 3090–0283, Temporary Contractor Information Sheet, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0283, Temporary Contractor Information Sheet''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0283, Temporary Contractor Information Sheet'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0283, Temporary Contractor Information Sheet.

Instructions: Please submit comments only and cite Information Collection 3090–0283, Temporary Contractor Information Sheet, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Ahn, Director, OCIO Identity Credential and Access Management Division, GSA, telephone (202) 501–2447 or via email at *phil.ahn@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The U.S. Government conducts criminal checks to establish that applicants or incumbents working for the Government under contract may have unescorted access to GSA-controlled facilities. GSA uses the Temporary Contractor Information Worksheet and the FBI Form FD–258 Fingerprint Card to conduct a FBI National Criminal Information Check (NCIC) for each temporary contractor (working on contract for six months or less and require physical access only) on GSA contracts for American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) efforts to determine whether to grant unescorted access to GSA-controlled facilities. GSA will continue to make physical access determinations for temporary contractors due to the American Recovery and Reinvestment Act of 2009.

The Office of Management and Budget (OMB) Guidance M–05–24 for Homeland Security Presidential Directive (HSPD) 12 authorizes Federal departments and agencies to ensure that temporary contractors have limited/controlled access to facilities and information systems. GSA Directive CIO P 2181.1 Homeland Security Presidential Directive-12 Personal Identity Verification and Credentialing (available at *http://www.gsa.gov/hspd12)* states that GSA temporary contractors must undergo a minimum of a FBI National Criminal Information Check (NCIC) to receive unescorted

physical access. Temporary contractors' Social Security Number is needed to keep records accurate, because other people may have the same name and birth date. Executive Order 9397 Numbering System for Federal Accounts Relating to Individual Persons also allows Federal agencies to use this number to help identify individuals in agency records. GSA describes how information will be maintained in the Privacy Act system of record notice published in the **Federal Register** at 73 FR 35690 on June 24, 2008.

B. Annual Reporting Burden

Respondents: 1,250.
Responses per Respondent: 1.
Hours per Response: .25.
Total Burden Hours: 313.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0283, Temporary Contractor Information Worksheet in all correspondence. The form can be downloaded from the GSA Forms Library at *http://www.gsa.gov/forms.* Type GSA 850 in the form search field.

Dated: October 9, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–25553 Filed 10–16–12; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA NUMBER: 93.086]

Announcement of the Award of Two Single-Source Program Expansion Supplements to Grantees Under the Pathways to Responsible Fatherhood Grants

AGENCY: Office of Family Assistance, ACF, HHS.

ACTION: Announcement of the award of single-source program expansion supplements to Kanawha Institute for Social Research & Action (KISRA) in Dunbar, WV, and Connections to Success in Kansas City, MO, to support Pathways to Responsible Fatherhood activities that promote responsible fatherhood through the provision of subsidized employment, family reunification, and economic stability services designed to move individuals and families to self-sufficiency.

SUMMARY: The Administration for Children and Families (ACF), Office of Family Assistance (OFA), Division of State and Territory TANF Management (DSTTM) announces the award of single-source program expansion supplement grants of $131,666 each to Kanawha Institute for Social Research & Action (KISRA) in Dunbar, WV, and Connections to Success in Kansas City, MO.

Connections to Success and KISRA offer community-centered, comprehensive approaches to promoting responsible fatherhood, and activities designed to promote economic stability, subsidized employment, and supportive services. The primary purpose of the projects is to eliminate barriers for fathers to achieve social and economic self-sufficiency through subsidized employment, including individuals preparing to reenter their communities or those who have recently returned to their communities following incarceration. Both projects implement three legislatively specified activities: healthy marriage, responsible parenting, and economic stability.

Kanawha Institute for Social Research & Action (KISRA)

The Kanawha Institute for Social Research & Action, Inc. was established as a 501(c)(3) non-profit organization in 1993 to serve and empower West Virginians through an array of education, employment, economic empowerment and behavioral health services in six West Virginia Counties: Kanawha, Cabell, Raleigh, Mercer, Fayette and Wood, as well as at 14 correctional facilities in the state.

Supplemental funds will be used for KISRA's Growing Jobs Project of the West Virginia Pathways to Responsible Fatherhood Initiative (GJP). The GJP program will serve at least 40 fathers who meet the following criteria: (1) Present TANF recipients, former TANF recipients or whose children are receiving TANF; (2) 200% or below the federal poverty level; (3) previously incarcerated. GJP will be housed at KISRA's headquarters in Dunbar, Kanawha County.

GJP is a subsidized employment strategy that will create at least 20 jobs through the operation of an urban farm and commercial kitchen. Wage subsidies will support program participants with starting salaries for these jobs that range from $8 per hour to $15 per hour. The project responds to community needs and market trends, which demonstrate that organic foods is a growing industry (7.7% in 2010) with sustainable opportunity for employment and career growth. Increased employment will promote sustainable development that will revitalize the community and assist low-income individuals in attaining economic self-sufficiency.

Connections to Success

Connections to Success is a 501(c)(3) non-profit organization nationally recognized for its 13 years of outcomes-based work combating poverty in Kansas and Missouri. Connections to Success's Pathways to Responsible Fatherhood program currently implements its *Successful STEPS* (Services and Training to Empower Parents) program, which provides skill-based parenting and relationship education, and promotes economic stability to parents and/or couples who are currently receiving public assistance through the Kansas Department of Social and Rehabilitation Services.

Supplemental funds will be used to increase the funding available for subsidized employment to provide an additional 24 participants partial wage subsidization with private employers. Additionally, supplemental funds will be used to add one full-time job developer to focus on creating additional employer partners for subsidized employment opportunities; one additional part-time trainer to allow for simultaneous trainings to occur at different locations; and one additional part-time case manager to lower the ratio of participants to case managers. This will increase the level of assistance to each participant with the goal of improved performance outcomes.

In addition to the subsidized employment services, both organizations will include the provision of supportive services to program participants, including comprehensive case management to strengthen father, couple, and family relationships.

DATES: September 30, 2012—September 29, 2013.

FOR FURTHER INFORMATION CONTACT: Robin Y. McDonald, Division Director, Office of Family Assistance, 370 L'Enfant Promenade, SW., 5th Floor East, Washington, DC 20047. Telephone: (202) 401–5587 Email: *robin.mcdonald@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Pathways to Responsible Fatherhood Grants program (HHS–2011–ACF–OFA–FK–0194) funds programs that demonstrate the ability to develop and implement a comprehensive approach to promoting responsible fatherhood, including activities designed to promote

economic stability, foster responsible parenting, and promote healthy marriage. Program designs that include case management, and support services that can facilitate program participation and improved effectiveness, were strongly encouraged. Finally, funding under this program also supports comprehensive and effective employment services, including subsidized employment.

Statutory Authority: The award is made under the authority of Claims Resettlement Act of 2010 (Pub. L. 111–291).

Susan Golonka,

Deputy Director, Office of Family Assistance, Administration for Children and Families.

[FR Doc. 2012–25561 Filed 10–16–12; 8:45 am]

BILLING CODE 4184–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.086]

Announcement of the Award of a Single-Source Program Expansion Supplement to One Grantee Under the Community-Centered Responsible Fatherhood Ex-Prisoner Reentry Pilot Project Grants

AGENCY: Office of Family Assistance, ACF, HHS.

ACTION: Announcement of the award of a single-source program expansion supplement to The RIDGE Project in Defiance, OH to support the Community-Centered Responsible Fatherhood Ex-Prisoner Reentry Pilot Project activities that promote responsible fatherhood through the provision of subsidized employment, family reunification, and economic stability services to formerly incarcerated fathers designed to move individuals and families to self-sufficiency.

SUMMARY: The Administration for Children and Families (ACF), Office of Family Assistance (OFA), Division of State and Territory TANF Management (DSTTM) announces the award of a single-source program expansion award of $131,666 to The RIDGE Project in Defiance, OH.

The RIDGE Project is a 501(c)(3), faith-based organization founded in 2000 and provides a broad range of services in Ohio to over 30,000 individuals a year with over 100,000 units of service each year. Their mission is to strengthen families through youth development, marriage and fatherhood programs, workforce development, and reentry programs designed to equip people to achieve social and economic self-sufficiency. Activities include the provision of economic stability, subsidized employment, and supportive services. Upon release from prison, participants continue in the program and are served by The RIDGE Project or one of its regional partners.

The primary purpose is to eliminate barriers for fathers to achieve social and economic self-sufficiency through subsidized employment for individuals preparing to reenter their communities or those who have recently returned to their communities following incarceration. The RIDGE Project also implements three legislatively specified activities: Healthy marriage, responsible parenting, and economic stability.

The program expansion supplement will support the project's culinary arts training and employment, designed to prepare program participants for careers in the culinary field. According to recent data from the *People Report Workforce Index,* which surveys restaurant human resources departments and recruiters on trends in employment, continued job growth is anticipated in the food service industry, with high levels of recruiting difficulty, and a rise in vacancies/turnovers expected. Employers are reporting that though they have hundreds of applicants, they are finding it increasingly difficult to find employees with the right skill set.

The RIDGE Project will begin offering an 8-week Culinary Arts training to formerly incarcerated fathers who have successfully completed their flagship responsible fatherhood and economic stability program and have evidenced their commitment to responsible fatherhood and show an aptitude and interest in the food service industry.

The program will provide students with the basic skills necessary to function in an entry-level capacity in a restaurant or commercial kitchen. Successful students will complete the program having achieved the ServSafe™ Certification, and will have demonstrated the core skills necessary to begin work in food preparation or as a line cook entrance chef. Finally, upon satisfactory completion, The RIDGE Project's Workforce Development Department will function to assist the fathers with job placement, including subsidized wages in local restaurants.

DATES: September 30, 2012–September 29, 2013.

FOR FURTHER INFORMATION CONTACT: Robin Y. McDonald, Division Director, Office of Family Assistance, 370 L'Enfant Promenade SW., 5th Floor East, Washington, DC 20047. Telephone: (202) 401–5587 Email: *robin.mcdonald@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Community-Centered Responsible Fatherhood Ex-Prisoner Reentry Pilot Project (HHS–2011–ACF–OFA–FO–0196) grants support to organizations that offer community-centered, pre-and post-release responsible fatherhood and supportive services to formerly incarcerated fathers, with the primary purpose of eliminating barriers and supportive services to social and economic self-sufficiency.

Statutory Authority: The award is made under the authority of Claims Resettlement Act of 2010 (Pub. L. 111–291).

Susan Golonka,

Deputy Director, Office of Family Assistance, Administration for Children and Families.

[FR Doc. 2012–25486 Filed 10–16–12; 8:45 am]

BILLING CODE 4184–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1056]

Draft Guidance for Industry and Food and Drug Administration Staff; eCopy Program for Medical Device Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''eCopy Program for Medical Device Submissions.'' The purpose of the draft guidance is to explain the new electronic copy (eCopy) program for medical device submissions. The draft guidance describes how FDA plans to implement the eCopy Program under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The inclusion of an eCopy is expected to improve the efficiency of the review process by allowing for the immediate availability of an electronic version for review rather than relying solely on the paper version. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments

on the draft guidance by November 16, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''eCopy Program for Medical Device Submissions'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your request, or fax your request to CDRH at 301–847–8149. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Phil Desjardins, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5452, Silver Spring, MD 20993–0002, 301–796–5678; or Steve Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled ''eCopy Program for Medical Device Submissions.'' This guidance explains the new eCopy Program for medical device submissions. At this time, submission of an eCopy of a medical device submission is voluntary. However, section 745A(b) of the FD&C Act, added by section 1136 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), requires the submission of an eCopy of certain device submissions after issuance of final guidance. This draft guidance describes how FDA plans to implement the eCopy Program under section 745A(b) of the FD&C Act. The inclusion of an eCopy is expected to improve the efficiency of the review process by allowing for the immediate availability of an electronic version for review rather than relying solely on the paper version.

The eCopy Program is not intended to impact (reduce or increase) the type or amount of data the applicant includes in a submission to support clearance or approval. An eCopy is defined as an exact duplicate of the paper submission, created and submitted on a compact disc, digital video disc, or in another electronic media format that FDA has agreed to accept, accompanied by a copy of the signed cover letter and the complete original paper submission.

II. Significance of Guidance

In section 745A(b), Congress granted explicit statutory authorization to FDA to implement the statutory eCopy requirement by providing standards, criteria for waivers, and exemptions in guidance. To the extent that this document provides requirements under section 745A(b)(2)(A) of the FD&C Act (i.e., standards, criteria for waivers, and exemptions), indicated by the use of the words *must* or *required,* this document is not subject to the usual restrictions in FDA's good guidance practice regulations, such as the requirement that guidances not establish legally enforceable responsibilities. (See 21 CFR 10.115(d).)

However, this document also contains guidance on implementing the eCopy Program. To the extent that this guidance describes recommendations that are not standards, criteria for waivers, or exemptions under section 745A(b)(2), it is being issued in accordance with FDA's good guidance practices regulation (21 CFR 10.115). Such parts of this guidance, when finalized, will represent the Agency's current thinking on this topic, and do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used for these recommendations if such an approach satisfies the requirements of the applicable statutes and regulations. The use of the word *should* in this guidance means that something is suggested or recommended, but not required. The final guidance will contain both binding and nonbinding provisions.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov* or from the CBER Internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*. To receive ''eCopy Program for Medical Device Submissions,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1797 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120 (510(k)); the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078 (Investigational Device Exemptions); the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231 (Premarket Approval); the collections of information in section 513(g) of the FD&C Act (21 U.S.C. 360c(g)) have been approved under OMB control number 0910–0705 (513(g)); the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control numbers 0910–0332 and 0910–0661 (Humanitarian Use Devices); and the collections of information in section 564 of the FD&C Act (21 U.S.C. 360bbb–3) have been approved under OMB control number 0910–0595 (Emergency Use Authorization). Prior to implementation of this requirement or issuance of a final guidance on this topic FDA will update the existing OMB approved information collections to properly document the submission of information through both paper and electronic means.

V. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments.

Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: October 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–25494 Filed 10–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Oncologic Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Oncologic Drugs Advisory Committee Meeting scheduled for November 8, 2012, is canceled. This cancellation applies to both the morning session and afternoon session of the meeting. This meeting was announced in the **Federal Register** of September 20, 2012 (77 FR 58399). The issues for which the FDA was seeking the scientific input of the committee have been resolved.

FOR FURTHER INFORMATION CONTACT: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

Dated: October 12, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–25503 Filed 10–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 14, 2012, between approximately 8:30 a.m. and 4 p.m. and on November 15, 2012, between approximately 8:30 a.m. and 2:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

For those unable to attend in person, the meeting will also be Web cast. The link for the Web cast is available at: *https://collaboration.fda.gov/vrbpac.*

Contact Person for More Information: Donald W. Jehn or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On November 14, 2012, the committee will meet in open session to discuss and make recommendations on the safety and immunogenicity of an Influenza A (H5N1) Virus Monovalent Vaccine manufactured by GlaxoSmithKline. On November 15, 2012, the committee will meet in open session to discuss and make recommendations on the safety and efficacy of a Hepatitis B Vaccine manufactured by Dynavax.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 7, 2012. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2 p.m. on November 14, 2012, and between approximately 12:15 p.m. and 12:45 p.m. on November 15, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 30, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 31, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee

meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–25484 Filed 10–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 7, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Paul Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, WO31–2417, Silver Spring, MD 20993–0002, (301) 796–9001, Fax: (301) 847–8533, email: *EMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the safety and efficacy of a new drug application (NDA) 200677, pasireotide injection (proposed trade name SIGNIFOR) for subcutaneous administration, submitted by Novartis Pharmaceuticals Corporation. Pasireotide is an analog (a chemical compound that resembles another compound in structure) of somatostatin. The proposed indication (use) for pasireotide injection is the treatment of patients with Cushing's disease who require medical intervention (Cushing's disease is a rare medical condition of excessive cortisol secretion that is secondary to a tumor located in the pituitary gland).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 2, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 25, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 26, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–25483 Filed 10–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Cellular, Tissue and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming teleconference meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one

portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

DATES: *Date and Time:* The teleconference meeting will be held on November 29, 2012 from 1 p.m. to 5 p.m., Eastern Time.

Location: National Institutes of Health (NIH), Building 29A, Conference Room 1A09, 9000 Rockville Pike, Bethesda, MD 20892. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the internet at *http://www.nih.gov/about/visitor/index.htm.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm.* Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Gail Dapolito or Sheryl Clark, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On November 29, 2012 the committee will meet in open session to hear updates of research programs in the Gene Transfer and Immunogenicity Branch, Office of Cellular, Tissue and Gene Therapies, Center for Biologics Evaluation and Research, and the Laboratory of Immunology, Office of Biotechnology Products, Center for Drug Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On November 29, 2012, from 1 p.m. to 4 p.m. (Eastern Time) the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 21, 2012. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 14, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 15, 2012.

Closed Committee Deliberations: On November 29, 2012, from 4 p.m. to 5 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 9, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–25482 Filed 10–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Health Service Corps Scholar Travel Worksheet (OMB No. 0915–0278)—Revision

Clinicians participating in the HRSA National Health Service Corps (NHSC) Scholarship Program use the online Travel Request Worksheet to request travel funds from the federal government for pre-employment interviews at sites on the NHSC's Job Opportunities List.

The travel approval process is initiated when a scholar notifies the NHSC of an impending interview at one or more NHSC-approved practice sites. The Travel Request Worksheet is also used to process an NHSC scholar's request to be reimbursed for moving expenses after he/she has successfully been matched to an approved practice site. Upon receipt of the Travel Request Worksheet, the NHSC will review and approve or disapprove the request and promptly notify the scholar and the NHSC logistics contractor regarding travel arrangements and authorization of the funding for the site visit or relocation.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Scholar Travel Request Worksheet	180	2	360	.0667	24
Total	180	2	360	.0667	24

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 11, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2012–25587 Filed 10–16–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: November 15, 2012.

Closed: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Baltimore, MD 21223.

Contact Person: Joshua Kysiak, Program Specialist, Biomedical Research Center, Intramural Research Program, National Institute on Drug Abuse, NIH, DHHS, 251 Bayview Boulevard, Baltimore, MD 21224, 443–740–2465, *kysiakjo@nida.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 11, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25449 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: November 9, 2012

Open: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–021: AIDS-Science Track Award for Research Transition (R03).

Date: November 9, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Channels, Transporters and Neurotransmission.

Date: November 14, 2012.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral, and Skin Systems.

Date: November 15, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.

Date: November 15, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Hilary D. Sigmon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 357–9236, *sigmonh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.

Date: November 15–16, 2012.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.

Date: November 15–16, 2012.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Endocrinology and Reproduction.

Date: November 15, 2012.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 11, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25448 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging and Sleep.

Date: November 8, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 11, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25447 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of changes in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, October 2, 2012, 1:00 p.m. to October 2, 2012, 4:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on September 6, 2012, 77; 173 FR 2012–21889.

The date and time of the meeting are changed to November 8, 2012, 1:00 p.m. to November 8, 2012, 2:00 p.m. The meeting is closed to the public.

Dated: October 9, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25446 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Time Sensitive Drug Abuse Research (R01).

Date: October 18, 2012.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD

20892–9550, 301–402–6626, *gm145a@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Integrated Behavioral Treatment & Services.

Date: October 23, 2012.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@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.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 9, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25445 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Bio-Specimen Repository Exploratory Grants.

Date: November 7, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/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: October 9, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25442 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Small Grants in Musculoskeletal Diseases (R03).

Date: November 9, 2012.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xincheng Zheng, Ph.D., MD, Scientific Review Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, MSC 4872, Bethesda, MD 20892, 301–594–4953, *xincheng.zheng@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 10, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25441 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Personality Studies.

Date: November 12, 2012.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Oral, Dental and Craniofacial Sciences.

Date: November 14–15, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Metabolism, Obesity and Diabetes.

Date: November 14, 2012.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: November 14, 2012.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1044, *campdm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 10, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25440 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel; NEI-RFA Stem Cell Approaches to Developing New Therapies for Ocular Diseases (R01).

Date: October 23, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *hoshawb@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Career Development and Conference Grant Applications—Basic Science.

Date: October 30–31, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *hoshawb@mail.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical Research—Anterior Eye, Myopia, Glaucoma and Optic Nerve.

Date: November 15–16, 2012.

Time: 6:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Jeanette M Hosseini, Ph.D., Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *Jeanette.hosseini@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 10, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25439 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the President's Cancer Panel.

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.

Name of Committee: President's Cancer Panel;

Date: November 16, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: HPV Vaccination: Clinical Practices, Standards, and Economic Implications.

Place: Courtyard Chicago Downtown/Miracle Mile, 165 East Ontario Street, Chicago, IL 60611.

Contact Person: Abby B. Sandler, Ph.D., Executive Secretary, Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 220, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892–8349, (301) 451–9399, *sandlera@mail.nih.gov.*

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.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/pcp/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 10, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25438 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.
Date: November 8–9, 2012.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.
Contact Person: Jose H Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Dermatology, Rheumatology and Inflammation.
Date: November 9, 2012.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments (CDT).
Date: November 12–13, 2012.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Zhang-Zhi Hu, MD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 594–2414, *huzhuang@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Developmental Pharmacology.
Date: November 13–14, 2012.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cancer Health Disparities/Diversity in Basic Cancer Research.
Date: November 13–14, 2012.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.
Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: NMR and Computational Studies of Biomolecules.
Date: November 13, 2012.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Multiple Sclerosis, Neuroimmunology and Brain Injury.
Date: November 13, 2012.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.
Date: November 13, 2012.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Paul Sammak, Ph.D., Scientific Review Officer, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, MSC 7892, Bethesda, MD 20892, 301–435–0601, *sammakpj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 10, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25437 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; R25 Review.
Date: October 30, 2012.
Time: 11:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Synthesis and Preclinical Evaluation of Medications to Treat Substance Use Disorders (SUDS) (R01)
Date: November 1, 2012.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852
Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; The

Diversity-promoting Institutions Drug Abuse Research Program (DIDARP).

Date: November 15, 2012.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Nadine Rogers, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–402–2105, *rogersn2@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 11, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25434 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Chemical Biology.

Date: November 6, 2012.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Endocannabinoids Therapeutic Targets.

Date: November 7–8, 2012.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–235: Climate Change and Health.

Date: November 8, 2012.

Time: 11:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 12, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention and Health Behavior.

Date: November 12–13, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Martha M Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology.

Date: November 12, 2012.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 10, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25436 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Silvio O. Conte Centers for Basic or Translational Mental Health Research.

Date: November 5, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Megan Kinnane, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Center for Genomic Studies on Mental Disorders.

Date: November 5, 2012.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Pre-Doctoral/Post-Doctoral Fellowships.

Date: November 7, 2012.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ITVA/ITVC Conflicts.

Date: November 8, 2012.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Grand Challenges in Global Mental Health.

Date: November 8, 2012.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 10, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–25435 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Report on Carcinogens Evaluation of Pentachlorophenol; Request for Nominations of Scientific Experts

SUMMARY: The National Toxicology Program (NTP), Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), is initiating development of the Report on Carcinogens (RoC) monograph on pentachlorophenol. To inform development of that monograph, the Office of the RoC (ORoC) will hold a web-based meeting to obtain information related to evaluating human epidemiologic studies on exposure to pentachlorophenol and cancer risk and invites the nomination of speakers. Nominees should have expertise in cancer epidemiology and knowledge of studies related to exposure to pentachlorophenol. Self-nomination is permitted.

DATES: The deadline for nominations is December 3, 2012.

ADDRESSES: Nominations should be submitted to Dr. Ruth Lunn, Director, ORoC, DNTP, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709; telephone (919) 316–4637; FAX: (301) 480–2970; *lunn@niehs.nih.gov*. Courier address: NIEHS, Room 2138, 530 Davis Drive, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. Ruth Lunn, Director, ORoC, DNTP, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709; telephone (919) 316–4637; FAX: (301) 480–2970; *lunn@niehs.nih.gov*. Courier address: NIEHS, Room 2138, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background: Pentachlorophenol (including its sodium salts) is a chlorinated aromatic compound that is used primarily as a wood preservative in the United States. It was selected for evaluation for the RoC based on widespread past use and current exposure in the United States and an adequate database of cancer studies.

The final concept document for pentachlorophenol, which outlines the rationale for its selection for RoC evaluation and the proposed approach for development of the cancer evaluation component of the RoC monograph on pentachlorophenol, is available on the RoC Web site (*http://ntp.niehs.nih.gov/go/37897*). The NTP Board of Scientific Counselors provided comments on the draft concept at its meeting on June 21, 2012 (minutes available at *http://ntp.niehs.nih.gov/go/9741)*.

Important to the evaluation of the potential carcinogenicity of pentachlorophenol is the assessment of evidence from human cancer studies. From an initial search of the peer-reviewed literature, the available human epidemiologic studies include: (1) Several case-control studies (primarily of hematopoietic cancer) reporting risk estimates for job titles associated with pentachlorophenol exposure or exposure to chlorophenols with limited information on exposure specific for pentachlorophenol, (2) case-control studies reporting risk estimates specific for pentachlorophenol, and (3) cohort studies of pentachlorophenol production workers or users. A key issue in evaluating the evidence in humans is the potential for confounding from co-exposures, especially contaminants of pentachlorophenol formed during its production. Major cancers of interest are multiple myeloma, lymphoma, and soft-tissue sarcoma.

Meeting Information: ORoC will hold a web-based meeting to obtain information related to evaluating human epidemiologic studies on exposure to pentachlorophenol and cancer risk, especially for lymphoma and multiple myeloma. In planning for this event, ORoC is inviting the nomination of speakers who would make presentations that focus on the methods used in human epidemiologic studies of pentachlorophenol to evaluate potential confounding from occupational co-exposures, other types of information that may be important in evaluating potential confounding, and how exposure to confounders may affect each study's findings. Once plans for the web-based meeting are finalized, additional information including agenda, speakers, logistics, and registration, will be announced in a subsequent **Federal Register** notice.

Request for Nominations of Speakers: ORoC invites the nomination of speakers for the web-based meeting with expertise in epidemiology and knowledge of cancer studies on exposure to pentachlorophenol. Self-nomination is permitted. Each nomination should include (1) Contact information for the nominee [name,

affiliation (if any), address, telephone, fax, and email], (2) a short description of the individual's expertise relative to the review of human epidemiologic studies of exposure to pentachlorophenol and cancer risk, (3) curriculum vitae, and (4) an abstract describing what would be covered in the talk to address the presentations' focus as noted above in ''Meeting Information.'' Persons submitting nominations should provide their name, contact information, affiliation, and sponsoring organization (if any). Nominations should be submitted to Dr. Lunn (see **ADDRESSES**); their receipt will be acknowledged by email. The deadline for nominations is December 3, 2012. Persons selected as speakers will be notified by email at least 30 days prior to the meeting.

Background Information on the RoC: The RoC is a congressionally mandated document that identifies and discusses substances that may pose a hazard to human health by virtue of their carcinogenicity. Substances are listed in the report as either known or reasonably anticipated human carcinogens. The NTP prepares the RoC on behalf of the Secretary of Health and Human Services following a formal, multi-step process for review and evaluation of selected substances (*http://ntp.niehs.nih.gov/go/rocprocess*). Information about the RoC is available on the RoC Web site (*http://ntp.niehs.nih.gov/go/roc*) or by contacting Dr. Lunn (see **ADDRESSES**).

Dated: October 11, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–25472 Filed 10–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0908]

Facility Security Officer Training Requirements; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments; correction.

SUMMARY: The Coast Guard published a notice of public meeting; request for comments in the **Federal Register** on October 11, 2012 (77 FR 61771), announcing a public meeting to receive comments on the development of a Facility Security Officer training program. The notice contains an inaccurate Internet link to RSVP for the public meeting.

DATES: The notice of public meeting; request for comments published in the **Federal Register** on October 11, 2012 (77 FR 61771) is corrected as of October 17, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or this notice, please call or email LTJG Lindsey Musselwhite, Commandant (CG–FAC–2), Coast Guard; telephone 202–372–1136, email *Lindsey.A.Musselwhite@uscg.mil* or LCDR José Ramírez, Commandant (CG–FAC–2), Coast Guard; telephone 202–372–1150, email *Jose.L.Ramirez@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: The notice of public meeting; request for comments published in the **Federal Register** on October 11, 2012 (77 FR 61771) contains an inaccurate Internet link on page 61771. This correction provides the accurate Internet link to RSVP for the public meeting.

Correction

In the notice of public meeting; request for public comments FR Doc. 2012–0908, beginning on page 61771, make the following correction. On page 61771, revise the last paragraph in the **ADDRESSES** section to read as follows:

To RSVP for the meeting, fill out the RSVP form using the following link *https://einvitations.afit.edu/inv/anim.cfm?i=123867&k=036341017D50.*

Dated: October 11, 2012.

Kathryn Sinniger,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2012–25571 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0855]

National Offshore Safety Advisory Committee

AGENCY: United States Coast Guard

ACTION: Committee Management; Notice of Federal Advisory Committee Meetings.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet on November 7 and 8, 2012, in Houston, TX to discuss various issues related to safety of operations and other matters affecting the oil and gas offshore industry. These meetings are open to the public.

DATES: NOSAC will meet Wednesday, November 7, 2012, from 1 p.m. to 5 p.m. and Thursday, November 8, 2012, from 8:30 a.m. to 5 p.m. Two subcommittees will meet the afternoon of November 7. Please note that the meetings may close early if the committee has completed its business or be extended based on the level of public comments.

ADDRESSES: The meetings will be held at the Marriott South Hobby Airport Hotel, 9100 Gulf Freeway, Houston, TX 77017, *http://www.marriott.com/houhh.* The November 7 afternoon subcommittee meetings will be held in the Corpus Christi room. The November 8 meeting will also be held at Marriott South Hobby Airport Hotel, in the Corpus Christi/South Padre Rooms.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''AGENDA'' section below. Comments must be submitted in writing no later than October 25, 2012, and must be identified by USCG–2012–0855 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *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.
- *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 methods.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to

this Notice, go to *http://www.regulations.gov,* insert USCG–2011–0855 in the Keyword ID box, press Enter, and then click on the item you are interested in viewing.

A public comment period will be held during the meeting on November 8, 2012, and speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact one of the individuals listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Commander Rob Smith, Designated Federal Officer of NOSAC, Commandant (CG–OES–2), U.S. Coast Guard, 2100 Second Street SW., Stop 7126, Washington, DC 20593–0001; telephone (202) 372–1410, fax (202) 372–1926, or Mr. Scott Hartley, Alternate Designated Federal Officer of NOSAC, Commandant (CG–OES–2), U.S. Coast Guard, 2100 Second Street SW., Stop 7126, Washington, DC 20593–0001; telephone (202) 372–1437, fax (202) 372–1926. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The National Offshore Safety Advisory Committee (NOSAC) provides advice and recommendations to the Department of Homeland Security on matters and actions concerning activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within U.S. Coast Guard jurisdiction.

Agenda

Day 1

NOSAC's two subcommittees will meet on November 7, 2012, between 1 p.m. and 5 p.m., to discuss its ongoing work. Times for these meetings are as follows: (1) Standards for Dynamic Positioning (DP) Operating Personnel (1 p.m. to 3:00 p.m.) and (2) Review of the Mississippi Canyon Block 252 Incident Reports stemming from the Deepwater Horizon casualty event (3:00 p.m. to 5 p.m.).

Day 2

The NOSAC will meet on November 8, 2012, to review and discuss reports and recommendations received from the two subcommittees from their deliberations on November 7. The Committee will use this information and consider public comments in formulating final recommendations to the agency. Public comments or questions will be taken at the discretion of the DFO during the discussion and recommendations portion of the meeting as well as during the public comment period, see Agenda item (13). A complete agenda for November 8th is as follows:

(1) Committee Administration;

(2) Welcoming comments from USCG;

(3) Presentation and discussion of Reports and Recommendations from the subcommittees and subsequent actions on:

(a) Standards for DP Operating Personnel; and

(b) Mississippi Canyon Block 252 Incident Reports.

(4) An update on recent U.S. Coast Guard (USCG) regulations and **Federal Register** notices that affect the offshore industry;

(5) An update on recent Bureau of Safety and Environmental Enforcement (BSEE) regulations, **Federal Register** notices and Notice to Lessees;

(6) A USCG Perspective on Arctic Activities;

(7) USCG Voluntary Operational Dynamic Positioning Guidelines;

(8) USCG National Center of Expertise, Outer Continental Shelf (OCS) Inspections;

(9) Updates on International Maritime Organization (IMO) activities of interest to the OCS community;

(10) American Petroleum Institute's Center for Offshore Safety Strategic Plan and Future Activities;

(11) Quality of USCG Inspections on the OCS/Overview of USCG's mission management system program;

(12) Task Statement discussion of Standards for Accommodation Service Vessels;

(13) Period for Public comment; and

(14) Adjournment of meeting.

A copy of each report is available at the *https://www.fido.gov* Web site or by contacting Scott Hartley. Use ''code 68'' to identify NOSAC when accessing this material through the Web site. Once you have accessed the Committee page, click on the meetings tab and then the ''View'' button for the meeting dated November 8, 2012, to access the information for this meeting. Minutes will be available approximately 30 days after this meeting. Both minutes and documents applicable for this meeting can also be found at an alternative site using the following web address: *https://homeport.uscg.mil/NOSAC.*

A transcript of the meeting and any material presented at the meeting will be made available through the *https://www.fido.gov* Web site.

The committee will review the information presented on each issue, deliberate on any recommendations presented in the subcommittees' reports, and formulate recommendations for the Department's consideration.

The committee will also receive tasking from CDR Rob Smith, Designated Federal Officer, on one proposed task statement: Standards for Accommodation Service Vessels. The committee will make recommendations to the U.S. Coast Guard concerning this task.

Dated: October 11, 2012.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards.

[FR Doc. 2012–25569 Filed 10–16–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We request your comments on the proposed rate adjustments.

DATES: Interested parties may submit comments on the proposed rate adjustments on or before December 17, 2012.

ADDRESSES: All comments on the proposed rate adjustments must be in writing and addressed to: Yulan Jin, Acting Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4637–MIB, 1849 C Street NW., Washington, DC 20240, Telephone (202) 219–0941.

FOR FURTHER INFORMATION CONTACT: For details about a particular irrigation project, please use the tables in **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

SUPPLEMENTARY INFORMATION: The first table in this notice provides contact information for individuals who can give further information about the irrigation projects covered by this

notice. The second table provides the current 2012 irrigation assessment rates, the proposed rates for the 2013 irrigation season, and proposed rates for subsequent years where these are available.

What is the meaning of the key terms used in this notice?

In this notice:

Administrative costs mean all costs we incur to administer our irrigation projects at the local project level and is a cost factor included in calculating your operation and maintenance assessment. Costs incurred at the local project level do not normally include Agency, Region, or Central Office costs unless we state otherwise in writing.

Assessable acre means lands designated by us to be served by one of our irrigation projects, for which we collect assessments in order to recover costs for the provision of irrigation service. (See total assessable acres.)

BIA means the Bureau of Indian Affairs.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand-deliver your bill will be stated on it.

Costs means the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility. (See *administrative costs, operation costs, maintenance costs,* and *rehabilitation costs*).

Customer means any person or entity to which we provide irrigation service.

Due date is the date on which your bill is due and payable. This date will be stated on your bill.

I, me, my, you and *your* means all persons or entities that are affected by this notice.

Irrigation project means a facility or portion thereof for the delivery, diversion, and storage of irrigation water that we own or have an interest in, including all appurtenant works. The term ''irrigation project'' is used interchangeably with irrigation facility, irrigation system, and irrigation area.

Irrigation service means the full range of services we provide customers of our irrigation projects. This includes our activities to administer, operate, maintain, and rehabilitate our projects in order to deliver water.

Maintenance costs means costs we incur to maintain and repair our irrigation projects and associated equipment and is a cost factor included in calculating your operation and maintenance assessment.

Operation and maintenance (O&M) assessment means the periodic charge you must pay us to reimburse costs of administering, operating, maintaining, and rehabilitating irrigation projects consistent with this notice and our supporting policies, manuals, and handbooks.

Operation or operating costs means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

Past due bill means a bill that has not been paid by the close of business on the 30th day after the due date as stated on the bill. Beginning on the 31st day after the due date, we begin assessing additional charges accruing from the due date.

Rehabilitation costs means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

Responsible party means an individual or entity that owns or leases land within the assessable acreage of one of our irrigation projects and is responsible for providing accurate information to our billing office and paying a bill for an annual irrigation rate assessment.

Total assessable acres means the total acres served by one of our irrigation projects.

Water delivery is an activity that is part of the irrigation service we provide our customers when water is available.

We, us, and *our* means the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov.*

Why are you publishing this notice?

We are publishing this notice to notify you that we propose to adjust our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, found at 25 CFR part 171. This regulation provides for the establishment and publication of the rates for annual irrigation assessments as well as related information about our irrigation projects.

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

When will you put the rate adjustments into effect?

We will put the rate adjustments into effect for the 2013 irrigation season and subsequent years where applicable.

How do you calculate irrigation rates?

We calculate annual irrigation assessment rates in accordance with 25 CFR 171.500 by estimating the annual costs of operation and maintenance at each of our irrigation projects and then dividing by the total assessable acres for that particular irrigation project. The result of this calculation for each project is stated in the rate table in this notice.

What kinds of expenses do you consider in determining the estimated annual costs of operation and maintenance?

Consistent with 25 CFR 171.500, these expenses include the following:

(a) Salary and benefits for the project engineer/manager and project employees under the project engineer/manager's management or control;

(b) Materials and supplies;

(c) Vehicle and equipment repairs;

(d) Equipment costs, including lease fees;

(e) Depreciation;

(f) Acquisition costs;

(g) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation facility infrastructure;

(h) Maintenance of a vehicle and heavy equipment replacement fund;

(i) Systematic rehabilitation and replacement of project facilities;

(j) Contingencies for unknown costs and omitted budget items; and

(k) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

When should I pay my irrigation assessment?

We will mail or hand-deliver your bill notifying you of: (a) the amount you owe to the United States; and (b) when such amount is due. If we mail your bill, we will consider it as being delivered no later than 5 business days after the day we mail it. You should pay your bill by the due date stated on the bill.

What information must I provide for billing purposes?

All responsible parties are required to provide the following information to the billing office associated with the irrigation project where you own or lease land within the project's assessable acreage or to the billing office associated with the irrigation project with which you have a carriage agreement:

(1) The full legal name of person or entity responsible for paying the bill;

(2) An adequate and correct address for mailing or hand-delivering our bill; and

(3) The taxpayer identification number or Social Security number of the person or entity responsible for paying the bill.

Why are you collecting my taxpayer identification number or Social Security number?

Public Law 104–134, the Debt Collection Improvement Act of 1996, requires that we collect the taxpayer identification number or Social Security number before billing a responsible party and as a condition to servicing the account.

What happens if I am a responsible party but I fail to furnish the information required to the billing office responsible for the irrigation project within which I own or lease assessable land or for which I have a carriage agreement?

If you are late paying your bill because of your failure to furnish the required information listed above, you will be assessed interest and penalties as provided below, and your failure to provide the required information will not provide grounds for you to appeal your bill or any penalties assessed.

What can happen if I do not provide the information required for billing purposes?

We can refuse to provide you irrigation service.

If I allow my bill to become past due, could this affect my water delivery?

If we do not receive your payment before the close of business on the 30th day after the due date stated on your bill, we will send you a past due notice. This past due notice will have additional information concerning your rights. We will consider your past due notice as delivered no later than 5 business days after the day we mail it. We have the right to refuse water delivery to any irrigated land for which the bill is past due. We can continue to refuse water delivery until you pay your bill or make payment arrangements to which we agree. We follow the procedures provided in 31 CFR 901.2, ''Demand for Payment,'' when demanding payment of your past due bill.

Are there any additional charges if I am late paying my bill?

Yes. We will assess you interest on the amount owed, using the rate of interest established annually by the Secretary of the United States Treasury (Treasury) to calculate what you will be assessed (31 CFR 901.9(b)). You will not be assessed this charge until your bill is past due. However, if you allow your bill to become past due, interest will accrue from the original due date, not the past due date. Also, you will be charged an administrative fee of $12.50 for each time we try to collect your past due bill. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of six percent (6%) per year, which will accrue from the date your bill initially became past due. As a Federal agency, we are required to charge interest, penalties, and administrative costs on debts owed to us pursuant to 31 U.S.C. 3717 and 31 CFR 901.9, ''Interest, penalties, and administrative costs.''

What else will happen to my past due bill?

If you do not pay your bill or make payment arrangements to which we agree, we are required to send your past due bill to the Treasury for further action. Under the provisions of 31 CFR 901.1, ''Aggressive agency collection activity,'' we must send any unpaid annual irrigation assessment bill to Treasury no later than 180 days after the original due date of the bill.

Who can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Northwest Region Contacts

Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone: (503) 231–6702.

Project Name	Project/Agency Contacts
Fort Hall Irrigation Project	Dean Fox, Superintendent, Fort Hall Agency, P.O. Box 220, Fort Hall, ID 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Edwin Lewis, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.

Rocky Mountain Region Contacts

Ed Parisian, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.

Project Name	Agency/Project Contacts
Blackfeet Irrigation Project	Stephen Pollock, Superintendent, Greg Tatsey, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent; (406) 338–7519, Irrigation Project Manager.

Crow Irrigation Project	Vianna Stewart, Superintendent, Kyle Varvel, Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent; (406) 638–2863, Irrigation Project Manager.
Fort Belknap Irrigation Project	Cliff Hall, Superintendent, Vacant, Irrigation Project Manager (Project operations & management contracted to Tribes), R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent; (406) 353–8454, Irrigation Project Manager (Tribal Office).
Fort Peck Irrigation Project	Rhonda Knudsen, Superintendent, P.O. Box 637, Poplar, MT 59255, Huber Wright, Acting Irrigation Project Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent; (406) 653–1752, Irrigation Project Manager.
Wind River Irrigation Project	Ed Lone Fight, Superintendent, Brent Allen, Irrigation Project Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent; (307) 332–2596, Irrigation Project Manager.

Southwest Region Contacts

William T. Walker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104, Telephone: (505) 563–3100.

Project Name	Project/Agency Contacts
Pine River Irrigation Project	John Waconda, Superintendent, Vacant, Irrigation Systems Operator, Irrigation Engineer. P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent; (970) 563–9484, Irrigation Engineer.

Western Region Contacts

Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 N. Central Ave., 4th Floor Mailroom, Phoenix, Arizona 85004, Telephone: (602) 379–6600.

Project Name	Project/Agency Contacts
Colorado River Irrigation Project	MarDon Glory, Acting Superintendent, Gary Colvin, Acting Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, 2719 Argent Avenue, Suite 4, Gateway Plaza, Elko, NV 89801, Telephone: (775) 738–0569.
Fort Yuma Irrigation Project	Irene Herder, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202.
San Carlos Irrigation Project Joint Works	Ferris Begay, Acting Project Manager, Clarence Begay, Irrigation Manager, P.O. Box 250, Coolidge, AZ 85128, Telephone: (520) 723–6203.
San Carlos Irrigation Project Indian Works	Cecilia Martinez, Superintendent, Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, P.O. Box 8, Sacaton, AZ 85147, Telephone: (520) 562–3326, Telephone: (520) 562–3372.
Uintah Irrigation Project	Johanna Blackhair, Superintendent, Dale Thomas, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, Telephone: (435) 722–4344.
Walker River Irrigation Project	Athena Brown, Superintendent, 311 E. Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

What irrigation assessments or charges are proposed for adjustment by this notice?

The rate table below contains the current rates for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. The table also contains the proposed rates for the 2013 season and subsequent years where applicable. An asterisk immediately following the name of the project notes the irrigation projects where rates are proposed for adjustment.

Project name	Rate category	Final 2012 rate	Proposed 2013 rate
Northwest Region Rate Table			
Fort Hall Irrigation Project *	Basic-per acre	$45.50	$47.00
	Minimum Charge per tract	32.50	32.50
Fort Hall Irrigation Project—Minor Units *	Basic-per acre	23.50	24.00
	Minimum Charge per tract	32.50	32.50
Fort Hall Irrigation Project—Michaud *	Basic-per acre	45.00	47.50
	Pressure per acre	62.00	65.50
	Minimum Charge per tract	32.50	32.50
Wapato Irrigation Project—Toppenish/Simcoe Units *	Minimum Charge for per bill	20.00	21.00
	Basic-per acre	20.00	21.00
Wapato Irrigation Project—Ahtanum Units *	Minimum Charge per bill	20.00	24.00
	Basic-per acre	20.00	24.00

Project name	Rate category	Final 2012 rate	Proposed 2013 rate
Wapato Irrigation Project—Satus Unit *	Minimum Charge for per bill "A" Basic-per acre "B" Basic-per acre	65.00 65.00 70.00	71.00 71.00 77.00
Wapato Irrigation Project—Additional Works *	Minimum Charge per bill Basic-per acre	67.00 67.00	71.00 71.00
Wapato Irrigation Project—Water Rental *	Minimum Charge Basic-per acre	72.00 72.00	79.00 79.00
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project *	Basic-per acre	19.00	19.50
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units) *.	Basic-per acre	23.30	23.80
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units) *.	Basic-per acre	23.00	23.50
Crow Irrigation Two Leggins Drainage District	Basic-per acre	2.00	2.00
Fort Belknap Irrigation Project *	Basic-per acre	14.75	15.00
Fort Peck Irrigation Project *	Basic-per acre	24.70	25.00
Wind River Irrigation Project—Units 2, 3 and 4 *	Basic-per acre	20.00	21.00
Wind River Irrigation Project—LeClair District * (see Note #1)	Basic-per acre	20.00	30.84
Wind River Irrigation Project—Crow Heart Unit*	Basic-per acre	14.00	14.00
Wind River Irrigation Project—A Canal Unit *	Basic-per acre	14.00	14.00
Wind River Irrigation Project—Riverton Valley Irrigation District	Basic-per acre	16.00	16.00
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum Charge per tract Basic-per acre	50.00 15.00	50.00 15.00

Project name	Rate category	Final 2012 rate	Proposed 2013 rate	Proposed 2014 rate
Western Region Rate Table				
Colorado River Irrigation Project	Basic-per acre up to 5.75 acre-feet.	$54.00	$54.00	To be determined.
	Excess Water per acre-foot over 5.75 acre-feet.	17.00	17.00	
Duck Valley Irrigation Project	Basic-per acre	5.30	TBD	
Fort Yuma Irrigation Project (See Note #2)	Basic-per acre up to 5.0 acre-feet.	86.00	TBD	
	Excess Water per acre-foot over 5.0 acre-feet.	14.00	TBD	
	Basic-per acre up to 5.0 acre-feet (Ranch 5).	86.00	TBD	
San Carlos Irrigation Project (Joint Works) (See Note #3)	Basic-per acre	30.00	$30.00	$30.00
	Proposed 2012—2013 Construction Water Rate Schedule:			
		Off Project Construction	On Project Construction—Gravity Water	On Project Construction—Pump Water
	Administrative Fee	$300.00	$300.00	$300.00

Project name	Rate category	Final 2012 rate	Proposed 2013 rate	Proposed 2014 rate
	Usage Fee	$250.00 per month	No Fee	$100.00 per acre-foot
	Excess Water Rate †	$5 per 1000 gal	No charge	No charge
	† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.			
San Carlos Irrigation Project (Indian Works)* (See Note #4).	Basic-per acre	$73.00	$81.00	To be determined.
Uintah Irrigation Project	Basic-per acre	16.00	16.00	
	Minimum Bill	25.00	25.00	
Walker River Irrigation Project*	Indian per acre	25.00	28.00	
	Non-Indian per acre	25.00	28.00	

* Notes irrigation projects where rates are proposed for adjustment.

NOTE #1—The O&M rate varies yearly based upon the budget submitted by the LeClair District.

NOTE #2—The O&M rate for the Fort Yuma Irrigation Project has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The BOR rate for 2013 is yet to be determined. The second component is for the O&M rate established by BIA to cover administrative costs including billing and collections for the Project. The 2013 BIA rate also is yet to be determined.

NOTE #3—The 2013 rate was established by final notice in the **Federal Register** on February 23, 2012 (Vol. 77 No. 36, page 10767). In addition, a Construction Water Rate Schedule for the San Carlos Irrigation Project—Joint Works is now formally established. The rate schedule establishes the fees assessed for use of irrigation water for non-irrigation purposes.

NOTE #4—The 2013 O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is the O&M rate established by the San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; this rate is proposed to be $43 per acre. The second component is for the O&M rate established by the San Carlos Irrigation Project—Joint Works and is determined to be $30.00 per acre. The third component is the O&M rate established by the San Carlos Irrigation Project Joint Control Board and is proposed to be $8 per acre.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

To fulfill its consultation responsibility to tribes and tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA-owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $130 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

Civil Justice Reform (Executive Order 12988)

In issuing this rule, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of

Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires December 31, 2012.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Information Quality Act

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Dated: October 11, 2012.

Michael R. Smith,

Acting Director, Bureau of Indian Affairs.

[FR Doc. 2012–25477 Filed 10–16–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L19100000–BK0000–LRCMM0E04162]

Eastern States: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Alabama, Louisiana.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM-Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Land Management, Eastern States, Branch of Cadastral Survey.

The lands surveyed are:

Huntsville Meridian, Alabama

T. 18 S., R 7 E.

The plat of survey represents the remonumentation of the corner of Sections 22, 23, 26, and 27, of the Huntsville Meridian, in the State of Alabama, and was accepted July 29, 2012.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs, Midwest Region.

Louisiana Meridian, Louisiana

T 5 N., R 1 W.

The plat of survey represents the survey of a parcel of land held in trust for the Jena Band of Choctaw Indians within Lot 6, Pine Heights Subdivision in Section 9, of the Louisiana Meridian, in the State of Louisiana, and was accepted September 17, 2012.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against these surveys, as shown on the plats, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plats until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: October 5, 2012.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2012–25573 Filed 10–16–12; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–HPPC–11442; 4320–pplb–318]

Record of Decision for the Final Environmental Impact Statement for the Susquehanna to Roseland 500-Kilovolt Transmission Line, Appalachian National Scenic Trail; Delaware Water Gap National Recreation Area and Middle Delaware National Scenic and Recreational River

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and its implementing regulations (40 CFR parts 1500–1508), the Northeast Regional Director, National Park Service (NPS), signed a Record of Decision (ROD) on October 1, 2012, granting construction and right-of-way permits to PPL Electric Utilities Corporation and the Public Service Electric and Gas Company (applicant) for the Susquehanna to Roseland 500-kilovolt (kV) transmission line to pass through the Appalachian National Scenic Trail, Delaware Water Gap National Recreation Area, and Middle Delaware National Scenic and Recreational River. The ROD is based on the *Susquehanna to Roseland 500-kV Transmission Line Right-of-Way and Special Use Permit Final Environmental Impact Statement* (Final EIS) which was released for a 30-day no action period beginning on September 1, 2012 and ending September 30, 2012. The ROD describes the selected alternative; other alternatives considered; the basis for the decision to grant the permit requested by the applicant; and mitigation measures. The ROD is not the final agency action for those elements of the decision that require the issuance of a permit or additional ROW. Final agency action to implement the decision will occur when a permit and ROWs incorporating these terms are completed and issued to the applicant.

SUPPLEMENTARY INFORMATION: The ROD is provided below.

United States Department of the Interior

National Park Service

Record of Decision

Susquehanna to Roseland 500-kV Transmission Line Right-of-Way and Special Use Permit Environmental Impact Statement

Appalachian National Scenic Trail, Delaware Water Gap National Recreation Area, Middle Delaware National Scenic and Recreational River, Pennsylvania and New Jersey

Introduction

The Department of the Interior, National Park Service (NPS), has prepared this Record of Decision (ROD) for the *Susquehanna to Roseland 500-kV Transmission Line Right-of-Way and Special Use Permit Environmental Impact Statement* (EIS) for Appalachian National Scenic Trail (APPA), Delaware Water Gap National Recreation Area (DEWA), and Middle Delaware National Scenic and Recreational River (MDSR) in Pennsylvania and New Jersey. This ROD states what the decision is, identifies the other alternatives considered, identifies the environmentally preferable alternative, discusses the basis for the decision, lists measures to minimize and/or mitigate environmental harm, and briefly describes public and agency

involvement in the decision-making process. The Non-Impairment Determination and final Statement of Findings (SOF) for wetlands and floodplains for the selected action are attached to this ROD. The ROD also concludes the NPS's responsibilities under Section 106 of the National Historic Preservation Act, and its implementing regulations at 36 CFR 800.8, by committing to the mitigation of adverse effects to historic properties.

Project Background

In 2007, the regional transmission operator, PJM Interconnection (PJM), identified a 500-kV transmission line between the Susquehanna Substation in Pennsylvania and the Roseland Substation in New Jersey as the preferred and most effective solution for reliability violations forecasted as part of the Federal Energy Regulatory Commission-approved Regional Transmission Expansion Plan (RTEP) process. Responding to this assessment, the applicant proposed to construct a 500-kV transmission to connect the two substations on a route that included crossings of DEWA, APPA, and MDSR.

PPL Electric Utilities Corporation (PPL) and Public Service Electric and Gas Company (PSE&G), jointly known as the applicant, applied for a permit to allow the construction, maintenance, and operation of the Susquehanna to Roseland line (S–R Line) across three units of the national park system, the expansion of the existing right-of-way (ROW), and the replacement of an existing 230-kV transmission line it owns. The existing 230-kV transmission line runs from the Bushkill substation to the Kittatinny substation (B–K Line), crossing DEWA, APPA, and MDSR. It also crosses a small panhandle of DEWA en route to and northwest of the Bushkill Station. The B–K Line towers are approximately 80 feet in height and the deeded ROW varies from 100 to 380 feet in width through the parks. The applicant proposes to replace the B–K Line towers with new towers up to 195 feet tall, install an additional circuit (the S–R Line), and widen the ROW to accommodate these new facilities. The new replacement B–K Line will be capable of carrying 500-kV, though it would be initially energized at only 230-kV. The applicant's proposal includes both the construction of the S–R Line and the replacement of the B–K Line as part of the project. References in this document to ''the line'' refer to both lines and the single set of towers they share.

The applicant's purpose for the proposed S–R Line is to strengthen the reliability of the grid at the direction of the regional transmission operator, PJM. PJM oversees the overall movement of wholesale electricity between many electric utilities in all or parts of 13 states and the District of Columbia. The PJM 2007 load forecast model identified 23 projected grid reliability criteria violations starting in 2012. PJM advised that an upgrade to this line would aid in resolving several violations and issues related to reliability and congestion. The need for the proposed S–R Line has been expressed several times by PJM in planning documents. PJM's Regional Transmission Expansion Plans from 2007 to 2010 have identified the proposed S–R Line as an important project on what was termed by PJM as a ''backbone'' line. The North American Electric Reliability Corporation (NERC) also identified the proposed S–R Line as a ''backbone,'' while the applicant has repeatedly noted the need for and importance of increased electrical transmission capacity between Berwick, Pennsylvania and Roseland, New Jersey. If constructed, the new S–R Line would make the current transmission line corridor an even more important link in the regional grid than it is now. The two new lines proposed would require a much higher level of access roads and activity to monitor and maintain.

The Pennsylvania Public Utility Commission (PAPUC) and the New Jersey Board of Public Utilities (NJBPU) have approved the S–R Line, although the approval included conditions and the NJBPU decision is being challenged in court.

Whether there is a need for the proposed S–R Line project is not for the NPS to decide, nor is it a factor in the preparation of the EIS; that question is within the purview of the PAPUC and NJBPU. The NPS prepared an EIS to determine whether to grant or deny the applicant's request for a construction and ROW permit within NPS lands.

Decision (Selected Action)

The National Park Service will implement alternative 2, which was identified as the agency's preferred alternative in the *Susquehanna to Roseland 500-kV Transmission Line Right-of-Way and Special Use Permit Final EIS,* with mitigation as described herein. The complete description of the selected alternative can be found in Chapter 2 of the final EIS in the following sections: *Description of the Alternatives, Elements Common to All Action Alternatives,* and *Alternative 2: Applicant's Proposed Route.* A summary of the key points of the selected alternative is provided below.

Under the selected alternative, the NPS will take final agency action when it issues a permit to grant a ROW and construction permit to PSEG and PPL for the expansion of the B–K Line to a new double-circuit line through NPS lands in accordance with this decision. The selected alternative will include the installation of a double-circuit 500-kV transmission line (consisting of new towers and conductors) and associated telecommunications infrastructure. Two static lightning and communications fiber lines will be installed on top of the structures; these lines, respectively, will protect the transmission lines from electrical interruptions and will serve as a communication link between existing substations. This telecommunications infrastructure will not be highly visible, and will not include cell towers. Telecommunications infrastructure will only be used for electrical transmission purposes and will not be sold to a third party. Existing structures in the B–K Line ROW between the Bushkill Substation and the eastern boundary of DEWA will be removed. Removal of the existing B–K line will require the removal of vegetation to permit the construction of spur roads to allow equipment access.

Spur roads will be 20 feet wide and will be surfaced with compacted dirt or gravel. Grading will occur to backfill over the existing tower foundations, counterpoises, and ground wires, to create a natural cover. Crane pads, approximately 200 feet by 200 feet will be constructed to provide a safe, level pad for large cranes to mobilize, set outriggers, and aid in the removal of transmission line towers. Wire pulling locations, approximately 200 feet by 200 feet, will be used for coiling conductors after they have been cut. Lattice towers will be disassembled at each tower location and placed on a tractor-trailer or hoisted by an air crane and shipped to a staging area for eventual recycling.

The route for the selected alternative follows the corridor of the B–K Line, which traverses approximately 4.3 miles of DEWA. Within DEWA boundaries, the route crosses MDSR and APPA approximately perpendicularly. Within the study area, the alternative 2 alignment is approximately 5.6 miles long. The alignment will enter DEWA from the west in Pennsylvania approximately 0.25 mile east of Big Bushkill Creek. The alignment will cross approximately 0.6 mile of DEWA land and then exit the park. In the next approximately 0.68-mile section of the study area, the alignment will travel to the Bushkill Substation, cross a small (0.06-mile) portion of DEWA, cross the Fernwood Golf Course, and then reenter DEWA south of the South Zone Ranger Station and north of DEWA

Headquarters. The alignment will travel southeast within DEWA for approximately 0.85 mile, then cross 0.10 mile of MDSR just north of Depew Island. The route will continue southeast approximately 2.4 miles past the Watergate Recreation Site and cross APPA. The route will then traverse another 0.25 mile from APPA to the eastern DEWA boundary. Beyond the boundary, the alignment will travel southeast approximately 0.7 mile to a Visual Split Location (VSL) which was used in the EIS to identify the geographical point outside the parks at which it becomes physically possible for the applicant to route the line as it sees fit.

The width of the existing B–K Line ROW ranges from 100 to 380 feet in Pennsylvania and New Jersey; however, the ROW is only cleared to a width between approximately 80 and 150 feet. In the FEIS, this alternative was analyzed assuming it would require clearing of vegetation for an additional 50 to 200 feet of ROW. To avoid and reduce impacts caused by clearing and construction activities, the applicant has agreed to limit clearing of the ROW and construction activities to no more than 200 feet, with clearing limited to 150 feet in some areas. The area to be cleared is specified in the Statement of Findings, Attachment B of this ROD.

Low impact tree clearing will be used to remove vegetation from the proposed ROW. Trees will be cut close to the ground, and stumps and root systems will be left in place to provide additional soil stability. A 50-foot buffer will be used near intermittent streams and wetlands and a 100-foot buffer near perennial streams.

Alternative 2 will require new access roads, because old trails and roadbeds on which the access roads are based are overgrown and will not allow access by large vehicles. Generally, access roads will fall within the transmission line ROW, but in some instances, it will be necessary for access roads to extend outside the ROW. Alternative 2 will require a total of 5.3 miles of access roads, 1.9 miles of which will be outside the ROW (1.5 miles in Pennsylvania and 0.4 mile in New Jersey). Access roads will initially be 20 feet wide to accommodate large construction vehicles. Following construction, access roads will be narrowed to 15 feet wide and will continue to be used for maintenance and vegetation management for the line. Access roads will be composed of gravel or compacted dirt.

Crane pads will be used for assembly and erection at each new tower location. Crane pad sites will be graded or cleared to provide a reasonably level pad free of any vegetation that could hinder tower construction. Some tower sites will require grading either to widen the pads from the existing structures or to create new pads, while other sites will be on relatively level areas that will only require some vegetation removal. At locations with steep topography, extensive excavation may be required to create a level pad. New towers will be constructed on a concrete foundation. Foundation dimensions will depend on topography, tower height, span length, and soil properties; however, tower foundations will generally extend below grade for 15 to 30 feet or more, with a diameter of 6 to 9 feet. On average, a typical concrete foundation will extend approximately 3 feet above ground level. If monopoles are feasible, they will be used. If monopoles are not feasible for these structures, it may be necessary to use lattice towers.

Wire installation includes all activities associated with the installation of conductor wire onto the new towers, such as the installation of primary conductor and ground wire, vibration dampeners, weights, spacers, and suspension and dead-end hardware assemblies. For stringing equipment that cannot be positioned at either side of a dead-end transmission tower, anchoring and dead-end hardware will be temporarily installed to sag conductor wire to the correct tension. Wire-stringing activities would be conducted as described in Institute of Electrical and Electronics Engineers Standard 524–1992, Guide to the Installation of Overhead Transmission Line Conductors.

Construction of transmission facilities will also consist of the establishment of staging yards for construction materials and equipment, completion of any roadwork, and removal of the B–K Line that currently crosses the parks. Staging yards for materials and equipment will be approximately 3 to 4 acres each. Efforts will be made to locate staging areas on previously disturbed property, abandoned excavations, or abandoned parking areas. Construction activities will last for approximately 8 months.

Maintenance of the S–R Line will be performed on an as-needed basis, but is expected to occur at least once annually, and will include maintenance of access roads and erosion/drainage control structures. Maintenance of vegetation will be performed by the applicant. NPS will require an NPS-specific, NPS-approved vegetation management plan.

Mitigation Measures/Monitoring

Mitigation measures will be implemented to minimize the impacts on resources from construction, operation, and maintenance activities. The NPS will also establish mechanisms to ensure that all mitigation obligations are met, mitigation measures are monitored for effectiveness, and unsuccessful mitigation is quickly remedied. In instances where impacts cannot be avoided and other mitigation is not feasible, compensation for resources lost or degraded through project construction, operation, and maintenance will be required. Examples of items that cannot be directly remedied through other mitigation include impacts that degrade the scenic and other intrinsic values of the parks or impacts that result in the loss of recreational use and visitor enjoyment. Compensation will be used to mitigate these items by improving the stewardship of other natural, cultural, scenic, and recreational resources similar to those impacted.

The NPS will require the applicant to follow certain Best Management Practices (BMPs)/mitigation measures for the selected alternative. Mitigation measures and BMPs specific to the impact topics, where applicable, are presented below. Mitigation measures are identified as BMPs NPS will require during construction and measures NPS will require over the life of the project. Compensatory mitigation measures are required for certain resources and are identified as applicable.

Geology

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

- Submit a detailed drilling plan for NPS review and approval for all drilling activities prior to drilling and construction activities.
- Complete geotechnical boring before construction to determine the appropriate depth needed to remove soils and weathered bedrock before reaching sound material where substantial excavation will occur. This will reduce the impacts of drilling in unstable material.
- Haul all tailings from geotechnical borings and drillings offsite, unless the NPS determines that there is a park need for the tailings.
- Use excavated rock as substrate for the access roads.
- Complete a preconstruction surface assessment prior to disturbance. Work will be completed by a qualified geologist. If any paleontological resources are found, they will be avoided. If the resources are unavoidable, they will be collected and properly cared for before the start of construction. Any paleontological resources collected will be properly

documented and turned over to the park.

• Monitor areas with potential paleontological resources during construction activities.

• NPS will analyze or approve any water sources for drilling operations. Measure the NPS will require that will Avoid and Minimize Impacts over the Life of the Project:

• Develop a buffer zone around areas of sensitive geologic resources. No activities will occur within the buffer zone. This buffer zone will protect these areas from drilling and excavation activities, limiting impacts.

Water and Soil Resources

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

• Prepare a spill prevention and response plan (SPRP) to reduce impacts on surface water, ground water, and aquatic species if equipment leaks or hazardous spills occur. The goal of the plan is to minimize the potential for a spill, contain any spillage to the smallest area possible, and to protect environmentally sensitive areas, including streams, rivers, and wetlands. The SPRP will include the following:

□ Procedures for fuel storage location, fueling activities, and construction equipment maintenance.

□ Lines of communication to facilitate the prevention, response, containment, and cleanup of spills during construction activities.

• Construct spur roads using geotextile fabric and stone, which will be removed at the conclusion of construction and will be revegetated using park approved species or seed mixes.

• Inspect potential erosion areas weekly. Additionally inspect potential erosion areas immediately after storm events. The applicant will smooth out ruts and spread gravel to stabilize the roadway and prevent erosion.

• Implement erosion control methods, such as silt fences during and after construction to reduce impacts of increased soil runoff on water resources. By retaining soil on-site, sediment and attached nutrients are prevented from leaving disturbed areas and polluting streams. The use of BMPs is estimated to reduce total suspended solids (TSS) by 40 percent, total nitrogen by 25 percent, and total phosphorus by 40 percent (Baldwin n.d., 1).

• Drill during winter months (when not in areas with known snake dens) to reduce impacts of drilling on aquatic communities. Winter is when the least number of aquatic species and individuals are present in nearby water bodies. Measures the NPS will require that will Avoid and Minimize Impacts over the Life of the Project:

• Construct access roads with a gravel surface that is semipermeable to reduce the amount of stormwater runoff. A reduction in sheet flow will decrease the amount of sedimentation, total suspended soils, contaminants, nutrients, and turbidity in surface waters and impacts on aquatic species.

• Construct road grades and alignments to follow the contour of the land with smooth, gradual curves; this will reduce the runoff potential of soils along the access roads outside the ROW.

• Develop and implement soil and erosion control plans as mandated in state permits for Pennsylvania Department of Environmental Protection (PADEP) and New Jersey Department of Environmental Protection (NJDEP).

• Use only those herbicides approved by the NPS for aquatic environments for removal of vegetation.

• Establish a 150-foot buffer near intermittent or perennial streams and wetlands. No activities will occur within the buffer. The buffer will reduce impacts on water quality and aquatic species.

Floodplains

Required mitigation measures are described in detail in the SOF, Attachment B of this ROD. All mitigation measures identified in the SOF are hereby incorporated by reference as mitigation measures required by this ROD.

Wetlands

Required mitigation measures are described in detail in the SOF, Attachment B of this ROD. All mitigation measures identified in the SOF are hereby incorporated by reference as mitigation measures required by this ROD.

Vegetation

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

• Promptly seed areas disturbed during construction of the transmission line with a conservation mix approved by NPS, and monitor these areas for the spread of invasive plant species.

• All areas where vegetation is to be removed will be clearly delineated and NPS approval of the limits of vegetation clearing will be obtained prior to any action taking place.

• Minimize disturbance to native plant species during construction to prevent the spread of non-native species.

• Clean equipment after leaving areas where invasive species are known to occur and before entering sensitive areas.

• Use construction materials (e.g., gravel) from sources that have been inspected and found to be free of invasive species and approved by NPS.

• Use timber mats during construction in areas outside the access roads to minimize soil compaction.

Measures the NPS will require that will Avoid and Minimize Impacts over the Life of the Project:

• Develop and implement an NPS-approved, long-term, park-specific vegetation management plan for the operation and maintenance of the line. Separate vegetation management plans are needed from PSE&G and PPL. These plans will focus on retaining habitat within the constraints of the North American Electric Reliability Corporation (NERC) guidelines, and the control of invasive species. These plans will address invasive species management, including early detection, monitoring, and treatment for target invasive species using an integrated pest management approach. Additionally, an invasive species management plan will address the possible spread of invasive species via wooden spools used to supply wire. Other topics in the vegetation management plan will include vegetation restoration (native seeding and plantings, with annual monitoring and re-treatment as needed to achieve minimum acceptable outcomes, including an increase in biodiversity); management of sensitive species and sensitive habitats during routine maintenance; management of the ROW vegetation that will increase habitat for scrub shrub species; the use of best management practices to include restrictions on use of machinery and equipment time-of-year restrictions on vegetation in sensitive areas; pre-approval by NPS on pesticide and herbicide use; and off-site compensation. The vegetation management plan will also include an equipment cleaning plan that will address techniques for removal of any invasive seed sources prior to entering the parks.

• Use existing roads with minimal development of new access roads.

• Require that maintenance crews enter the ROW on foot and use handheld equipment for vegetation maintenance in sensitive areas.

• Clean equipment after leaving areas where invasive species are known to occur and before entering sensitive areas.

• All woody vegetation (including chips) will be removed from the parks unless instructed otherwise by NPS staff.

• Complete measures for the annual suppression of invasive plants within the ROW for the life of the project.

Landscape Connectivity, Wildlife Habitat, and Wildlife

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

• Consult with NPS on deposition of brush piles. Where approved by NPS, leave brush piles alongside the ROW to provide habitat for wildlife species following the clearing of vegetation.

• Remove spur roads following construction and maintain the ROW to provide bird habitat.

• Vegetation clearing will occur outside the breeding season of migratory birds to reduce the likelihood of disturbing nesting birds.

• The applicant will avoid take and minimize disturbance to eagles during construction and operation of the line.

• Construction within 660 feet of any important eagle use area (breeding, foraging or roosting) will be completed outside the season of use.

• Loud and disruptive impacts such as pile driving or blasting will not occur within one-half mile of an important eagle use area during the season of use.

Measures the NPS will require that will Avoid and Minimize Impacts over the Life of the Project:

• Impose a seasonal restriction on maintenance activities from March 15 through July 31 to prevent unauthorized take of nests and unfledged chicks protected under the Migratory Bird Treaty Act (MBTA). An avian protection plan (APP) will be developed and will be a condition of the applicant's permit.

• Impose a seasonal restriction on maintenance activities in March and April in areas of known amphibian migration to prevent direct mortality of spring peepers, wood frogs, spotted salamanders, red spotted newts, and Jefferson salamanders.

• Consult with NPS on deposition of brush piles. Where approved by NPS, leave brush piles alongside the ROW to provide habitat for a variety of wildlife species following the clearing of vegetation.

• The applicant will submit an application to FWS for a permit to cover the applicant's liability under the BGEPA.

• Diverters will be placed on the shield or static wire from the bank of the Delaware River on the New Jersey side of the line, to the top of the Hogback Ridge in Pennsylvania. Diverters suggested for use by the USFWS are yellow, coiled-PVC avian flight diverters or flapper diverters placed at roughly 50-foot intervals on the shield wire with communications wire to increase the visibility of the line within the Kittatinny Ridge Migratory Corridor.

• Tower lighting will only be permitted on the four towers where recommended by FAA, and only via AVWS system, such that lighting is only triggered by the approach of aircraft, minimizing the amount of time towers will be lit.

Special-Status Species

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

• Obtain a qualified biologist to conduct preconstruction surveys before any ground-disturbing or vegetation clearing activities. Surveys will be to determine the presence of special-status species, habitat, nests, dens, and new hibernacula, and to determine if relocation will be an appropriate mitigation measure for any species found. Some species such as reptiles, amphibians, and mussels could be collected and relocated prior to or during construction activities, if this is found to be beneficial or appropriate to the species found at the site. If relocation is undertaken, a plan for the relocation of special-status species will be designed in consultation with the appropriate federal and state agencies and a qualified and permitted biologist will collect and relocate individuals to nearby suitable habitat. Preconstruction surveys are particularly important because construction may not occur for some time following the completion of the NEPA process and special-status species could begin using habitat between site surveys and construction activity. If special-status species, nests, dens, or habitats are found, then consultation measures will be developed and implemented in consultation with state and federal regulatory agencies.

• Develop and implement (by recognized and qualified zoologists including individuals certified by the U.S. Fish and Wildlife Service or state conservation agencies and approved by NPS) species-specific conservation and mitigation plans if special-status wildlife species or occupied habitat cannot be avoided. These individuals will complete on-site monitoring. The plans will include:

☐ Conservation measures, such as time-of-year restrictions.

☐ Pre-construction surveys.

☐ Construction monitoring.

☐ Habitat preservation and habitat restoration components.

☐ Post-construction monitoring as needed.

• Ensure that park staff, their representatives, or representatives from appropriate state or federal agencies who are experienced in managing or monitoring special-status species are on site to monitor for special-status species during the construction activities to verify that special-status species are not in the active construction area.

• Implement road closures and/or patrols prior to and during construction activities at locations where it was deemed effective.

• Install barrier fencing along streams to keep wood turtles from entering construction sites.

• Implement seasonal restrictions to reduce impacts on special-status species. Seasonal restrictions will be site-specific, based on species present and their use of the site and include the following:

☐ Seasonal restrictions on vegetation clearing from March 15 through July 31 will prevent the unauthorized take of nests and unfledged chicks of birds protected by the MBTA (USFWS 2010). This seasonal restriction will protect the majority of the special-status bird fledglings that may occur in the study areas for each alternative. Therefore, the permanent and seasonal resident nesting special-status bird species will not be forced to abandon nests or young, because vegetation clearing will not occur during the nesting season; no direct mortality of eggs, young, or adults will occur as a result.

☐ Seasonal restrictions for disturbance of bald eagles will include a restriction within 1,000 feet of bald eagle nests between December 15 and August 31, the bald eagle nesting period. This restriction is recommended in the Bald Eagle Guidelines (USFWS 2007).

☐ Seasonal restrictions for tree clearing and construction will be implemented from December 15 to March 31 in the vicinity of bald eagle roosts.

☐ To prevent cutting of potential roost trees for the Indiana bat, a season restriction from April 1 through September 30, which includes the restriction of cutting trees with a diameter at breast height (DBH) greater than 8.7 inches will be implemented.

☐ A seasonal restriction from April 1 through October 31 preventing the cutting of all trees or snags with a DBH greater than 5 inches will be implemented to avoid potential impacts on northern myotis and other tree-roosting bats.

☐ Seasonal restrictions on project activities will be implemented in venomous snake basking, birthing, and foraging habitat during the active season. Safe dates for project activities span from November 1 through March 31. Further timing restrictions for

drilling and excavation activities will be required in the vicinity of overwintering dens.

☐ Seasonal restrictions for neotropical birds and bats will also benefit nesting and birthing reptile species in the spring and summer.

☐ Seasonal restrictions will be implemented on project activities in wood turtle foraging habitat during the active season. Safe dates for project activities are November 15 through March 31.

☐ Seasonal restrictions on project activities in bog turtle wetlands and 300-foot buffer during active season will be implemented. Safe dates for project activities are November 1 through March 31.

Measures the NPS will require that will Avoid and Minimize Impacts over the Life of the Project:

• Develop and implement NPS-approved, long-term, park-specific vegetation management plans for the operation and maintenance of the line. Separate vegetation management plans are needed for both from PSE&G and PPL. These plans will help reduce impacts to special-status species and the habitats they utilize.

• Provide construction plans (as described in the general Construction and Restoration Plan) for each set of construction activities in order to facilitate modification of construction activities that may adversely impact areas that support special-status species.

• The applicant will submit an application to FWS for a permit to cover the applicant's liability under the BGEPA.

• The applicant will either conduct monitoring or will provide NPS the funding to conduct monitoring in the vicinity of the line during construction and operation of the line in order to determine the level of hazard to eagles. If the likelihood of take is determined to be low, the standard permit will not require renewal, and the operation of the line will be consistent with BGEPA. If the monitoring suggests that take is likely to occur, the applicant will initiate the development of a programmatic permit to cover their liability during the operational life of the line.

• Consult with appropriate federal and state agencies if special-status plant populations cannot be avoided, depending on the listing status of the species present. These consultations will determine appropriate mitigation measures for any populations affected by the proposed project. Appropriate measures could include the creation of offsite populations through seed collection or transplanting, preservation, and enhancement of existing populations, or restoration or creation of suitable habitat in sufficient quantities to compensate for the impact.

☐ Translocation includes digging up plants and moving them to appropriate portions of the corridor that will not be affected by the proposed construction activities.

☐ Seeds can also be collected from plants that will be removed and either planted directly or germinated in a nursery and then planted in appropriate locations.

• Develop and implement (by recognized and qualified zoologists including individuals certified by the U.S. Fish and Wildlife Service or state conservation agencies) species-specific conservation and mitigation plans if special-status wildlife species or occupied habitat cannot be avoided. These individuals will complete on-site monitoring. The plans will include:

☐ Conservation measures, such as time-of-year restrictions.

☐ Pre-construction surveys.

☐ Construction monitoring.

☐ Habitat preservation and habitat restoration components.

☐ Post-construction monitoring as needed.

• Complete an APP in accordance with the Bald Eagle Guidelines (USFWS 2007) and APLIC standards.

☐ The APP will include elements that provide for training for all utility and contractor personnel on compliance with applicable regulations, procedures to be implemented for avoidance and minimization of disturbance, reporting bird mortality, required permits, accepted construction standards for reducing bird impacts, methodology for evaluation of risks to migratory birds, opportunities for enhancement of bird populations or habitat, public awareness and education, and identification of key resources.

☐ The standards described in APLIC (1994) will be followed and will also comply with the APLIC *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006* (APLIC 2006).

☐ Proposed construction and maintenance activities will follow and adhere to the Bald Eagle Guidelines (USFWS 2007), which will minimize the potential for ''take'' on the bald eagle.

☐ To reduce impacts on birds from collisions with the transmission line, the APP (PSE&G 2010) will be written in compliance with APLIC standards and will use the current best available technologies.

• Continue to identify and control invasive plant species through the applicant's invasive plant management plans. In addition, an aggressive invasive plant management plan developed and implemented by the applicant will include ongoing monitoring and treatment.

• Close access roads to the public to reduce the impacts of illegal collection. It has been demonstrated by Garber and Burger (1995, at 1152 and 1158) that when formerly intact, undisturbed, forested areas are opened to human recreation, the extinction of special-status species can occur in that particular area. Rare species, especially plants and small reptiles and amphibians, are vulnerable to illegal collecting, and even small numbers collected annually for a number of years could jeopardize the local population.

• NPS law enforcement will monitor visitor activities in these areas, including the use of remote surveillance to assess the need for and effectiveness of area closures. There will be an increase in patrols along the access roads and any new ROW. Existing and proposed new access roads, especially access roads, could act as an attractive nuisance and/or recreation opportunity, by inviting visitors to areas inhabited by rare species and increasing visitor encounters with these species.

• NPS law enforcement and resource staff will monitor closed areas for invasive species, vegetation, wildlife, and erosion, and the presence of park staff may dissuade visitors from entering these illegal areas.

• Implement seasonal restrictions to reduce impacts on special-status species. Seasonal restrictions will be site-specific, based on species present and their use of the site and include the following:

☐ Seasonal restrictions on vegetation clearing from March 15 through July 31 will prevent the unauthorized take of nests and unfledged chicks of birds protected by the MBTA (USFWS 2010). This seasonal restriction will protect the majority of the special-status bird fledglings that may occur in the study areas for each alternative. Therefore, the permanent and seasonal resident nesting special-status bird species will not be forced to abandon nests or young, because vegetation clearing will not occur during the nesting season; no direct mortality of eggs, young, or adults will occur as a result.

☐ Seasonal restrictions for disturbance of bald eagles will include a restriction within 1,000 feet of bald eagle nests between December 15 and August 31, the bald eagle nesting period. This restriction is recommended in the Bald Eagle Guidelines (USFWS 2007).

☐ Seasonal restrictions for tree clearing and construction will be implemented from December 15 to March 31 in the vicinity of bald eagle roosts.

☐ To prevent cutting of potential roost trees for the Indiana bat, a season restriction from April 1 through September 30, which includes the restriction of cutting trees with a diameter at breast height (DBH) greater than 8.7 inches, will be implemented.

☐ A seasonal restriction from April 1 through October 31 preventing the cutting of all trees or snags with a DBH greater than 5 inches will be implemented to avoid potential impacts on northern myotis and other tree-roosting bats.

☐ Seasonal restrictions on project activities will be implemented in venomous snake basking, birthing, and foraging habitat during the active season. Safe dates for project activities span from November 1 through March 31. Further timing restrictions for drilling and excavation activities will be required in the vicinity of overwintering dens.

☐ Seasonal restrictions for Neotropical birds and bats will also benefit nesting and birthing reptile species in the spring and summer.

☐ Seasonal restrictions will be implemented on project activities in wood turtle foraging habitat during the active season. Safe dates for project activities are November 15 through March 31.

☐ Seasonal restrictions on project activities in bog turtle wetlands and 300-foot buffer during active season will be implemented. Safe dates for project activities are November 1 through March 31.

Measures to specifically protect bog turtles will be undertaken in accordance with the *Bog Turtle (Clemmys muhlenbergii) Northern Population Recovery Plan* (USFWS 2001), and the bog turtle conservation zones presented in the ''Special-status Species'' section of chapter 3 of the final EIS. These actions will be undertaken where appropriate as mitigation measures. Future coordination with appropriate federal and state agencies will clarify the extent to which adverse effects to the bog turtle will be likely to occur and will determine whether a biological assessment (BA) will be required. Other conservation and/or mitigation measures to protect the bog turtle suggested by the Recovery Plan include the restoration of disrupted wetland hydrology, the control of invasive species, reconnection of fragmented habitat, population monitoring, and protection of nests from collection and predation (USFWS 2001).

Cultural Resources

Mitigation measures for cultural resources are described in the Section 106 discussion, below, and are incorporated by reference.

Infrastructure, Access and Circulation

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

Prior to construction activities, the applicant will complete the following:

- Develop a construction staging plan with NPS.
- Develop a traffic control plan in conjunction with NPS.
- Work with NPS to develop a plan for the control of unauthorized public access and use on NPS lands that could result from the proposed project. The agreement will address various provisions related to unauthorized access, such as the following:

☐ Additional measures to be taken to discourage unauthorized use of the project corridor and associated access roads.

☐ Periodic inspection for unauthorized access and any resulting damage.

☐ Repair of any damage from unauthorized access.

- Develop a media strategy/notification plan as a means to notify local residents, businesses, and officials of closures and changes in traffic patterns.
- Develop an off-highway vehicle/all-terrain vehicle (OHV/ATV) deterrent plan prior to construction activities.

During construction activities:

- Design and construct new access roads to minimize runoff and soil erosion.
- Install gates at the entrances to access roads to reduce unauthorized use; coordinate gate locks with NPS.
- Restore public roadways to their pre-construction conditions or better upon completion of project construction activities.
- Reclaim any road-related disturbance areas after construction is completed.
- Permanently close and revegetate spur roads to discourage OHV/ATV use. For roads still in use, restrict access by unauthorized users as identified in the OHV/ATV deterrent plan.

Visual Resources

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

During construction activities:

- Restrict construction vehicle movement outside the ROW to NPS-approved routes. Should additional road access be required, permission be sought from the NPS prior to disturbance, and appropriate remuneration fees will be assessed.
- Keep areas around the towers clean and free of debris.
- Maintain a clean construction site and remove all related equipment, materials, and litter following construction.
- Revegetate disturbed areas with approved species.
- Provide regular maintenance of access roads and fences within and leading to the corridor.
- Cut stumps close to ground.
- Implement ''low-impact tree clearing'' which involves directional tree-felling, both mechanically and by hand.
- Rehabilitate or restore disturbed areas, as applicable.

Measures the NPS will require that will Avoid and Minimize Impacts over the Life of the Project:

During Project Design several mitigation measures will be undertaken. It should be noted that, in some cases, visual resource mitigation measures may directly contradict mitigation measures under APLIC that make the lines more visible to birds in order to decrease bird collisions and electrocutions; in these cases, the APLIC guidelines will prevail:

- Locate new access roads within previously disturbed areas.
- Route the alignment of new access roads to follow landform contours where practicable, providing that such alignment does not impact additional resource values, to minimize ground disturbance and/or reduce scarring (visual contrast) of the landscape.
- Place structures in designated areas so as to avoid sensitive features such as, but not limited to, riparian areas, water courses, and cultural sites, and/or to allow conductors to clearly span the features, within limits of standard tower design. If the sensitive features cannot be completely avoided, towers will be placed so as to minimize the disturbance.
- Place tower structures at the maximum feasible distance from roadway and trail crossings, and where preservation of existing vista(s) is particularly important. Distances will be within the limits of standard tower structure design.
- Use non-reflective neutral colored paints and coatings approved by the NPS to reduce reflection, glare, and/or contrast on structures.
- Use non-reflective insulators (i.e., non-ceramic or porcelain).
- Use non-specular conductors to reduce reflectivity.

• Locate construction staging areas away from visually sensitive locations.

• Conceptual landscaping in the form of vegetation planted outside but along the utility ROW.

• Tower lighting will only be permitted on the four towers where recommended by FAA, and only via AVWS system, such that lighting is only triggered by the approach of aircraft, minimizing the amount of time towers will be lit.

During maintenance activities:

• Restrict construction vehicle movement outside the ROW to NPS-approved routes. Should additional road access be required, permission must be sought from the NPS prior to disturbance, and appropriate remuneration fees will be assessed.

• Keep areas around the towers clean and free of debris.

• Maintain a clean construction site and remove all related equipment, materials, and litter following construction.

• Revegetate disturbed areas with approved species.

• Provide regular maintenance of access roads and fences.

• Cut stumps close to ground.

• Implement ''low-impact tree clearing'' which involves directional tree-felling, both mechanically and by hand, and add buck trees to promote decomposition.

• Rehabilitate and/or restore disturbed areas.

Soundscapes

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

• Comply with county and city noise ordinances.

• Install sound-control devices on all construction equipment.

• Install muffled exhaust on all construction equipment and vehicles except helicopters, if used.

Visitor Use and Experience

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

• Coordinate construction schedules with NPS to avoid peak visitor use periods and notify visitors of construction.

• The applicant must develop a plan to avoid or minimize impacts to park visitors, including visitors using roads, trails, the river and other areas affected by construction. The applicant must assure visitor safety while keeping recreation areas open to the greatest extent possible. NPS must approve the timing and duration of all closures.

• Prior to construction develop a media strategy/notification plan as a means to notify local residents and visitors of closures.

Health and Safety

BMPs NPS will require to Avoid and Minimize Impacts during Construction:

• Develop safety and emergency plans for the project prior to construction activities.

• Fully train operators of the construction equipment and vehicles to reduce the chance of accidents.

• Inspect construction equipment for malfunctions or faulty parts to reduce the risk of leaking fluids that could harm the environment or humans from contact.

• Put in place safety devices such as traveling grounds, guard structures, and radio-equipped public safety roving vehicles and lineman prior to the initiation of wire stringing activities.

• Install guard poles or guard structures at all transportation, flood control, and utility crossings. Guard poles are temporary facilities designed to stop the travel of the conductor should it momentarily drop below a conventional stringing height.

• Restrict use of the immediate area in which construction will occur for safety reasons (PPL and PSE&G 2008, A10–6) to minimize impacts on park visitors during construction of the line within the parks.

• Fence off construction areas in areas outside of the park, but inside the study area, where the public could access the construction site.

• Station a safety representative at APPA crossings during any and all construction to maintain public safety.

• Station a safety watchman on the river during stringing operations to stop any boat traffic if an incident does occur or if conditions otherwise warrant (PPL and PSE&G 2008, 6).

• Implement road closures and traffic control to minimize the risk of accidents from occurring during the construction period.

• Regularly maintain and inspect helicopters and employ operators certified/licensed in helicopter aviation.

• Operators conducting aerial work in support of the utility may encounter hazards from the various types of flight profiles, terrain, infrastructure, weather, and operation at low levels and speeds.

□ To reduce the potential risk of a collision, the crew will identify potential collision hazards and make corrective actions prior to taking flight.

□ While in flight, the crew will exercise concentration, maintain situational awareness, be knowledgeable of their area of operations, maintain effective communications, and establish clear roles and responsibilities.

Compensatory Mitigation

The applicants have offered, and NPS will require as a permit condition, that they deposit at least fifty-six million dollars ($56,000,000) into a Middle Delaware Compensation Fund, as will be described in a memorandum of agreement to be entered with and managed by The Conservation Fund, to:

• Acquire lands from willing sellers that can be included in the boundaries of APPA and DEWA as compensatory mitigation for lands over which ROW rights are granted.

• Carry out wetlands restoration projects elsewhere within APPA and DEWA as compensatory mitigation for wetlands impacted by ROW clearing and maintenance.

• Carry out historic preservation projects elsewhere within APPA and DEWA as compensatory mitigation for historic properties impacted by line construction.

Other Alternatives Considered

Alternative 1—No Action

Under the no-action alternative, the NPS would deny the applications for ROWs and construction permits to expand the B–K Line to a new double-circuit line through NPS lands. The existing B–K Line traverses approximately 4.3 miles of DEWA. The line initiates at the Susquehanna Substation and enters DEWA in Pennsylvania approximately 0.25 mile east of Big Bushkill Creek. The line then exits the park, connects to the Bushkill Substation, travels through developed areas, including Fernwood Golf Course, and reenters DEWA south of the South Zone Ranger Station and north of DEWA Headquarters, crossing MDSR just north of Depew Island. The line continues southeast past the Watergate Recreation Site and across APPA to the eastern DEWA boundary. There are 22 existing transmission towers located within DEWA boundaries for the existing B–K Line, and there are no existing access roads to the ROW. This alternative assumes that the existing line within the parks would remain in place without expansion or replacement. In essence, it assumes that current conditions on the ground will continue indefinitely into the future. However, the applicant could seek to expand or replace the existing utility lines within the existing easements through the parks. There are no proposals to do so at this time.

Alternative 2b—Applicant's Alternate Proposal

The alignment for the applicant's alternate proposal would follow the same route as described for alternative

2 (the selected alternative). The difference between alternative 2 and alternative 2b is that the former would require widening the existing ROW, while the latter would be constructed within the existing ROW. The towers for alternative 2b would be the same height as those described for alternative 2, but alternative 2b would require two additional towers within NPS lands compared to alternative 2. These towers would be constructed within the 100-foot-wide portion of the alignment. Because the ROW under alternative 2b is narrow, the applicant's plans require these additional towers to protect against fire hazards presented by the risk of conductor blowout. The minimum horizontal clearance to the edge of the ROW under high wind conditions to prevent conductor blowout was determined to be greater than 100 feet, and the NPS has expressed concern about the safety of constructing within the existing ROW. The applicant's proposal is based upon the controversial assumption that they have a right to clear danger trees on NPS property outside any deeded ROW (PPL 2010b). It is assumed that larger individual trees outside the ROW would be removed periodically.

Access roads for alternative 2b are similar as those described for alternative 2, with a slight difference in Pennsylvania between the Bushkill Substation and the Delaware River. Alternative 2b would require a total of 5.3 miles of access roads, of which 2.4 miles would occur outside the ROW.

Alternative 3

The alternative 3 alignment would pass through DEWA along the ROW of existing transmission and distribution lines. The existing transmission and distribution lines would be removed prior to construction of the S–R Line. The existing transmission line ROW is cleared to 100 feet wide, and this alternative would require clearing of vegetation for an additional 50 to 200 feet of ROW. The structures of the transmission and distribution lines would be constructed so that these lines and the S–R Line would run parallel to one another within the expanded ROW. That is, two separate sets of structures would be constructed, one set for the proposed S–R Line and one set for the existing transmission and distribution lines along the alternative 3 alignment. Alternative 3 would cross a total of 5.4 miles within the DEWA boundary. The route would cross about 1.3 miles of DEWA within the study area and about 1.7 miles of the northern end of Worthington State Forest, which is located within DEWA's exterior boundaries. The alignment for this alternative also crosses MDSR within DEWA, and APPA within Worthington State Forest.

The alternative 3 alignment is approximately 6.9 miles long within the study area. The alternative 3 alignment would follow the alignment of the B–K Line for 0.6 mile from the western boundary of DEWA to the Bushkill Substation. The alignment would leave the study area and travel southwest to reenter the study area via the VSL point located in Monroe County, Pennsylvania, outside DEWA. From the western VSL, the alignment would cross River Road and the McDade Trail about 1.0 mile southwest of the Smithfield Beach Picnic Area and 0.75 mile northeast of the Hialeah Picnic Area. The alignment would continue southeast within DEWA approximately 0.8 mile to MDSR. On the east side of MDSR, the route would travel northeast approximately 0.49 mile to the boundary of Worthington State Forest; the remainder of the alignment within DEWA boundaries would also be encompassed by Worthington State Forest's boundaries. The alignment would travel southeast approximately 1.69 miles to the eastern edge of DEWA, perpendicularly crossing APPA. The alignment would travel another 0.24 mile beyond the DEWA boundary to the VSL. The alternative 3 alignment would reenter DEWA beyond the eastern VSL as well. In the path to join the alignment of the B–K Line in New Jersey, alternative 3 could travel along the border of DEWA for 1.8 miles, paralleling APPA for this entire distance. Alternative 3 would require approximately 3.5 miles of access roads, of which 0.9 mile would occur outside the ROW.

Alternative 4

Alternative 4 would pass through three portions of DEWA; the section of the park from the western boundary along the B–K Line to the Bushkill substation; through the southwestern boundary of the park, where the alignment leaves the boundary of the park for 0.51 mile, then re-enters the park. On the southernmost portion of DEWA, alternative 4 runs along the path of an existing distribution line ROW, and would also pass through a section of the park along the alignment of the B–K Line. The existing ROW is cleared from 100 to 200 feet wide, and this alternative would require permanent clearing of vegetation for an additional 100 to 200 feet of ROW. This line along alternative 4 would be removed prior to construction of the S–R Line. The structures of the existing distribution line would be replaced so that this line and the double-circuited S–R Line would run parallel to one another within the expanded ROW. The route would cross about 1.5 mile of NPS lands, including DEWA and APPA. This alternative would also cross the Lower Delaware River; however, the crossing of the Delaware River would occur outside DEWA and MDSR boundaries and outside the study area.

Alternative 4 would have a north–south orientation and would be approximately 2.3 miles long within the study area. As with alternative 3, the alternative 4 alignment follows the alignment of the B–K Line for 0.6 mile from the western boundary of DEWA to the Bushkill Substation. The alignment would leave the study area and travel southwest to reenter the study area via the VSL point at the edge of DEWA, near the southwestern boundary of the park. Upon entering DEWA from the north, the alternative 4 alignment would cross about 0.42 mile of DEWA land, roughly following the DEWA boundary, and would cross Mountain and Totts Gap roads. The alignment would then leave the boundary of DEWA for approximately 0.51 mile, before re-entering the park. Upon reentering DEWA, the alignment would immediately cross APPA, then extend approximately 0.50 mile south to the southern boundary of DEWA. South of DEWA, the alternative 4 alignment would extend another 0.24 mile before the southern VSL. The designated boundary of Cherry Valley National Wildlife Refuge borders the existing ROW of the alternative 4 alignment north of APPA for approximately 0.73 mile. Alternative 4 would require a total of approximately 2.5 miles of access roads, with approximately 1.6 miles within NPS boundaries. Alternative 4 would use 0.9 mile of existing roads as access roads and would require construction of 1.6 miles of new access roads, of which 0.5 mile would occur outside the ROW.

Alternative 5

Alternative 5 would run along the path of an existing distribution line ROW in the southernmost portion of DEWA. The existing ROW is cleared to 100 feet wide, and this alternative would require permanent clearing of vegetation for an additional 200 feet of ROW. This line along alternative 5 would be removed prior to construction of the S–R Line. The structures of the existing distribution line would be replaced so that this line and the double-circuited S–R Line would run parallel to one another within the expanded ROW. The route would cross

about 1.5 mile of NPS lands, including DEWA and APPA. This alternative would also cross the Lower Delaware River; however, the crossing of the Delaware River would occur outside DEWA and MDSR boundaries and outside the study area.

Alternative 5 would have a north–south orientation and would be approximately 1.7 miles long within the study area. Alternative 5 would enter the study area via the VSL point at the edge of DEWA, near the southwestern boundary of the park. Upon entering DEWA from the north, the alternative 5 alignment would cross about 0.42 mile of DEWA land, roughly following the DEWA boundary, and would cross Mountain and Totts Gap roads. The alignment would then leave the boundary of DEWA for approximately 0.51 mile, before re-entering the park. Upon reentering DEWA, the alignment would immediately cross APPA, then extend approximately 0.50 mile south to the southern boundary of DEWA. South of DEWA, the alternative 5 alignment would extend another 0.24 mile before the southern VSL. The designated boundary of Cherry Valley National Wildlife Refuge borders the existing ROW of the alternative 5 alignment north of APPA for approximately 0.73 mile. Alternative 5 would require a total of approximately 1.7 miles of access roads; however, 0.9 mile of existing road would be used. Alternative 5 would require construction of approximately 0.9 mile of new access roads, of which 0.16 mile would occur outside the ROW.

Basis for Decision

The purpose and need of the NPS action analyzed in the EIS is to grant or deny the applicant's proposal considering the purposes and resources of the affected units of the national park system, as expressed in statutes, regulations, policy, and the NPS objectives in taking action. In making the decision to select alternative 2, the NPS considered the applicant's existing property rights, the alternatives evaluated in the EIS and the impacts on park resources and values of each alternative, and the comments received from other agencies and the public during the EIS process. Following is an evaluation of the other alternatives examined in the EIS with regard to how each factored into the decision-making process.

No-action Alternative: There is a great deal of public support for selecting the no action alternative, which means that the NPS would deny the permit application and the existing powerline would remain essentially unchanged. The impact analysis in the EIS showed that the no action alternative would have the least adverse impacts on park resources and values, and it was identified in the EIS as the environmentally preferable alternative. The NPS agrees that the no action alternative would be the best choice if the only consideration were protection of park resources and values. However, the NPS cannot ignore the fact that the applicant owns a property interest in the existing powerline corridor. The applicant asserts that these existing rights are sufficient to allow it to build an alternative design to the line (Alternative 2b) without the grant of additional rights. The NPS may not prevent the applicant from exercising these rights without effectuating a taking. Accordingly, there are two possible results of the selection of the no-action alternative. First, the line may not be built, and the environmental status quo may continue if the applicants decide to abandon the project, as analyzed in the EIS. This is viewed as unlikely by the NPS. Second, the applicant may decide to pursue alternative 2b, as analyzed, asserting its present property rights, and if it were prevented from constructing within its present rights, it might assert a ''takings'' claim against the United States. The latter is a particularly undesirable option for the NPS as, in its view, as discussed below, alternative 2b is less preferable than the selected alternative. Condemnation of the present right of way to prevent construction of alternative 2b has been rejected as impractical. Consequently, selection of the no-action alternative would present the NPS with significant uncertainty, and a strong probability that the eventual outcome would be worse for park resources than the selected alternative. Under these circumstances, NPS has rejected the no-action alternative in favor of the selected alternative, which, while causing more impact than failure to construct would, causes less impact than Alternative 2b.

Alternative 2b: At first glance, alternative 2b might appear to have fewer impacts to some park resources because the applicant would be restricted to building entirely within the existing ROW width. However, the additional width required by the selected alternative is only 50 feet, or 25 feet on either side of centerline, over a small portion of the line within APPA and DEWA. The difference in width between alternative 2b and the selected alternative comes with some significant costs, as the existing width in some sections is insufficient to meet current safety standards. Although the applicant asserts that alternative 2b could be built safely, independent transmission line engineers engaged by NPS disagree, and NPS views this alternative as creating serious safety concerns due to insufficient clearance between the lines and vegetation. Alternative 2b would also require two additional towers within park boundaries, with attendant increases in tower visibility and construction impact. Finally, the present ROW deeds are the basis of ongoing disagreement between the NPS and the applicants over the extent to which applicants may clear vegetation outside the area of cleared right of way. Alternative 2b (like the no-action alternative) would leave this disagreement unresolved, while the selected alternative would resolve it.

Alternatives 3, 4 and 5: Alternatives 3, 4, and 5 were developed to examine whether or not the proposed powerline could be constructed across the parks in a less sensitive area, and with less impacts to park resources and values. Alternative 3 was discovered to have more impacts on some resources and was not considered a desirable choice once the analysis was completed. Alternatives 4 and 5 both have far less impacts on park resources and values than the other action alternatives and from the NPS perspective, would meet the test of protecting park resources and values to the greatest extent possible without unduly interfering in the property rights of the applicant. However, alternatives 3, 4, and 5 were all based on a presumption that the applicant would voluntarily give up their existing property rights along the current easement and in return, the NPS would grant a new ROW in the selected location. The applicants have indicated that they are unwilling to give up their existing easement in exchange for another in a new location. As noted in the EIS, the NPS has considered but rejected the option of requiring the construction of the line in a new location while permitting the present line to remain. Thus, the NPS has selected alternative 2, the applicant's proposal, with the mitigation measures described in this ROD. As discussed above, the selection factor with the greatest weight was the legal constraint presented by the applicant's existing property rights. However, in making the selection, the NPS also considered the adverse impacts on park resources and values that would likely result from construction of the new powerline, as well as the NPS' authority to reasonably regulate these activities within park

boundaries. Therefore, the selected alternative incorporates mitigation that will be required conditions of the NPS permit. The NPS believes the required mitigation will avoid and minimize adverse impacts to the greatest degree possible, recognizing that some significant adverse impacts may still occur. The applicant has offered compensatory mitigation for unavoidable adverse impacts, as detailed above under Mitigation Measures. This is important and welcome, and a necessary offset to the impacts imposed on park resources; however, compensatory mitigation was not a deciding factor in the selection of the alternative, which was driven primarily by legal considerations and the relative impacts of the alternatives. As discussed above, mitigation will be implemented to avoid and minimize adverse impacts to the greatest degree possible, but unavoidable adverse impacts will still occur.

Environmentally Preferable Alternative

The Council on Environmental Quality (CEQ) regulations require federal agencies to identify the environmentally preferable alternative in a Record of Decision (40 CFR 1505.2). The environmentally preferable alternative is the alternative that causes the least damage to biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. The environmentally preferable alternative is identified upon consideration and weighing by the Responsible Official of long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, such as when different alternatives impact different resources to different degrees, there may be more than one environmentally preferable alternative (43 CFR 46.30).

The NPS has determined that alternative 1 (no action) is the environmentally preferable alternative. The NPS made this determination based on the analysis of the scientific data about the proposal and included mitigation provided by the applicant and collected by NPS contractors. Alternative 1 would result in the least amount of damage to the biological and physical environment. As the data show, all the alternatives will have some degree of direct and indirect adverse impact on the resources identified within the study area. None of the action alternatives would produce a net benefit or even keep conditions completely neutral; they would all be negative from an environmental point of view. Alternative 1 would leave the existing B–K Line ROW in place, essentially maintaining conditions at status quo, with the exception of increased vegetation management, which would be likely to occur along the corridor of all the alternatives due to implementation of the newest NERC safety standards. Nonetheless, the relatively minor impacts of additional cutting and clearing in the existing ROW would be outweighed by the more significant environmental damage that would certainly occur with the construction and operation of a larger transmission line within the parks under any of the other proposed alternatives, including the two proposed by the applicant. Alternative 1 would thus result in the least damage among the alternatives. Alternative 1 would best protect and preserve the scenic, historic, cultural, recreational and natural resources of the parks involved and will therefore best promote the national environmental policy of NEPA.

Public and Agency Involvement

The planning process for the EIS was conducted with extensive public and agency involvement that included multiple newsletters, workshops, meetings, briefings, and a formal public comment process. These activities are briefly summarized below and a detailed discussion is presented in ''The Public Scoping Process'' section in Chapter 5 of the final EIS and appendix I.

Scoping

The internal scoping process began with scoping meetings conducted on September 15, 16, and 17, 2009, with staff members from the parks, the NPS Environmental Quality Division, the NPS Northeast Region, and contractor personnel in attendance. The internal scoping meeting began with a presentation on the process and background of NEPA, followed by a presentation by the applicant. During the remaining days, NPS identified the purpose of and need for action, management objectives, issues, and impact topics. Park resources, possible alternative elements, and the project schedule were also discussed. A preliminary alternatives meeting was held on December 16 and 17, 2009, with staff members from the parks, representatives from PPL and PSE&G, and contractor personnel in attendance. The purpose of the meeting was to discuss the route alternatives for the S–R Line developed by the applicant, develop the criteria to evaluate the different transmission line route alternatives, and work cooperatively to develop additional transmission line route alternatives in addition to the ones provided by the applicant. Public scoping began with the January 21, 2010, **Federal Register** publication of the notice of intent to prepare an EIS (75 FR 3486–3487). The notice of intent summarized the proposed action and explained how to comment on the action. NPS released a public scoping newsletter to the public for review and comment on January 21, 2010. The newsletter included a description of the proposed S–R Line, the purpose and need, background information, project objectives, and a list of issues and impact topics. The newsletter also provided information on upcoming public scoping meetings. The newsletter was sent to individuals, businesses, agencies, and organizations on the parks' email distribution list. The parks also issued a news release inviting the public to comment at the scoping meetings. On February 16, 17, and 18, 2010, public scoping meetings were held in Bushkill, Pennsylvania, Lake Hopatcong, New Jersey, and Parsippany, New Jersey, respectively. Each meeting began with an open house, followed by a short presentation by NPS explaining the project, as well as the project planning process. A formal public comment session with a court reporter was held after the NPS presentation. A total of 311 participants attended the public scoping meetings and 102 spoke formally during the comment sessions. A 30-day public scoping comment period, with a two-week extension, was provided from January 21 until March 12, during which members of the public were able to submit their comments on the proposed S–R Line. During the entire public scoping period, over 6,500 pieces of correspondence were received.

A second preliminary alternatives workshop was held May 4, 5, 6, and 7, 2010. Attendees included staff members from the parks, NPS Environmental Quality Division Northeast Region, and contractor personnel. The meeting included a discussion of the project schedule, identification of additional data needed for the analysis of alternatives, a discussion of the proposed alternative, a discussion of which alternatives should be dismissed, and logistics for the public meetings. Following this workshop, NPS held another set of public meetings regarding alternatives on August 17, 18, and 19, 2010, in Bushkill, Pennsylvania; Stroudsburg, Pennsylvania; and Lafayette, New Jersey, respectively. The public was invited to submit comments on alternatives from July 9, 2010, to September 14, 2010. During the public

comment period, 1,700 separate pieces of correspondence were received.

Public Comment on Draft EIS

On November 21, 2011, the NPS released the draft EIS for the S–R Line for public review and comment. The draft EIS included a description of the proposed project and alternatives proposed, a description of the resources found within the study area, and an analysis of the impacts of the proposed project on these resources. The draft EIS was available for public review until January 31, 2012. During the comment period, three public meetings were held in Pennsylvania and New Jersey from January 24 through 26, 2012. Meetings were held in Bushkill, Pennsylvania; Stroudsburg, Pennsylvania; and Lafayette, New Jersey. Each public meeting had an open house from 2:30 p.m. until 4:30 p.m. and a public hearing from 6:00 p.m. until 9:00 p.m. A total of 368 individuals attended the public comment meetings in Pennsylvania and New Jersey, and a total of 102 participants spoke during the formal public comment sessions. Nearly 27,000 pieces of correspondence were received during the public comment period. Approximately 26,000 pieces of correspondence were form letters submitted by the National Parks Conservation Association and the Sierra Club. All of the public comments received on the draft EIS were read and analyzed by the NPS team. The analysis of the public comments received and NPS responses are provided in appendix L of the final EIS. Among the comments received, a majority were expressions of support for the no action alternative, general opposition to the project, and opposition to the proposed mitigation. Commenters cited concerns over impacts to natural and cultural resources, as well as the visitor experience as reasons they did not support the proposed project.

Based on comments received from the applicant, an access road that was proposed through Arnott Fen was moved to reduce project impacts. In addition, blasting for tower installation was also removed and replaced with drilling to reduce impacts to geologic and natural resources. Other changes to the draft EIS as a result of public comments included warranted corrections and clarifications to the document.

Section 106 of the National Historic Preservation Act

Consistent with guidance in National Park Service Management Policies and Directors Orders, NPS managers elected to comply with Section 106 of the National Historic Preservation Act for the issuance of the construction and ROW permit through the use of 36 CFR 800.8(c), which allows federal agencies to use the NEPA process to meet Section 106 compliance responsibilities, according to standards in that subpart of the regulations. Integration of the requirements of Section 106 of the NHPA into the NEPA process and documentation are accomplished by meeting the criteria set forth in 36 CFR 800.8(c)(1)–(4).

Early in the scoping process for the EIS, NPS staff began consulting with the Pennsylvania and New Jersey Historic Preservation Offices and numerous federally-recognized Tribes. Additionally, the scoping process included sets of news releases, public scoping meetings that included newsletters and information on historic resources, and general public notification of the decision-making process and alternatives being considered. NPS staff members shared extensive research, hosted consultation calls, and conducted on-site consultation meetings, finalizing the list of Section 106 consulting parties in spring 2012, when the NPS identified a preferred alternative.

The list of Section 106 consulting parties includes the Absentee Shawnee Tribe of Indians of Oklahoma; Advisory Council on Historic Preservation; Appalachian Trail Conservancy; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; New Jersey Historic Preservation Office; New York-New Jersey Trail Conference; Oneida Nation of New York; Onondaga Nation of New York; Pennsylvania State Historic Preservation Office; Preservation New Jersey; Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York); Seneca-Cayuga Tribe of Oklahoma; Seneca Nation of New York; Shawnee Tribe, Oklahoma; Stockbridge-Munsee Community, Wisconsin; and Tonawanda Band of Seneca Indians of New York.

Other local organizations and municipalities have participated in discussions about this project.

In addition to information that was made available to the public in the draft EIS on the undertaking and its effects on historic properties, the NPS and the applicant have completed numerous cultural resource studies and investigations. The results of these efforts were shared with the Section 106 consulting parties. National Park Service cultural resource studies and findings supported the development of the draft EIS. The applicants' final reports, completed in spring 2012, contributed to development of the final EIS. Details on the consultation process can be found in Appendix M of the final EIS, and the PEPC site for the Susquehanna-Roseland Transmission Line, (*http://parkplanning.nps.gov/document.cfm?parkID=220&projectID=25147&documentID=49560*).

The EIS and associated consultation determined the Area of Potential Effect (APE) (as described in the draft EIS and final EIS) and identified historic properties contained within it. The NPS worked with the consulting parties and the applicant to avoid and minimize effects to historic properties where possible and mitigate adverse effects where necessary. It was determined that there would be adverse effects to at least one archeological site, seventeen historic structures, and fourteen cultural landscapes (as specified in the final EIS). Through this ROD, the NPS commits to the following measures and processes to further avoid or minimize effects, and to mitigate adverse effects to historic properties from the issuance of the ROW and construction permit to the applicant. As discussion between the NPS, consulting parties and the applicant continue, and the applicant finalizes the design of the transmission line, the NPS will refine the minimization and mitigation measures and formalize the commitments itemized below as conditions of the permit granted to the applicant.

Mitigation Measures

While there are some physical effects, adverse effects from the issuance of this permit are primarily visual; due to the scale of the proposed towers, minimization efforts through vegetative screening are unlikely to be successful. Accordingly, through consultation with the Section 106 consulting parties, the NPS has developed mitigation measures that address the overall adverse effect to the parks from issuing the permit rather than focusing on effects to individual properties. The mitigation measures for specific properties and broad-based management plans and interpretive materials will be stipulated in the applicant's permit. The applicant will fund the identified mitigation measures, as well as any future avoidance, minimization, or mitigation measures resulting from the issuance of the NPS permit, with oversight by the NPS. All of the activities below will be completed according to the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR 68), and by, or under the supervision of, personnel who meet the Secretary of the Interior's

professional qualification standards (48 FR 44716, 1983), as appropriate.

Appalachian National Scenic Trail

• The applicant will allocate $500,000 from the Middle Delaware Compensation Fund to rehabilitate, improve, and protect elements and features of the Appalachian Trail that contribute to its National Register eligibility. The two specific activities below (viewshed analysis and National Register nominations) will be paid for from this allocation. These efforts may be associated with points along the Trail that are directly affected by the Susquehanna-Roseland Line or may be associated with mitigating existing adverse effects at other points along the Trail within the established Area of Potential Effect. Projects will be completed by the National Park Service, the Appalachian Trail Conservancy, or other not-for-profit organizations associated with the Appalachian Trail (e.g., New York-New Jersey Trail Conference, the Appalachian Mountain Club). Rehabilitation, screening, or clearing will be decided upon and conducted at the direction of the National Park Service after discussion with the appropriate Section 106 consulting parties after construction.

• The NPS will oversee the preparation of a viewshed analysis for the portion of the Appalachian Trail within the APE that will identify critical, character-defining views to inform the development of the National Register nominations discussed below.

• The NPS will oversee the preparation of National Register nominations for the entire portion of the Appalachian Trail within the State of New Jersey and a reasonable segment of the Trail in Pennsylvania, as determined in discussion with the Pennsylvania State Historic Preservation Office. These nominations will follow the standards of the multiple property documentation form the NPS is currently developing for the full length of the Appalachian Trail. The nominations must meet the standards of the New Jersey State Historic Preservation Officer, Pennsylvania State Historic Preservation Officer, and National Register of Historic Places, and will be considered complete when accepted and approved by the Keeper of the National Register.

• In addition to these measures, there are efforts related to this decision underway outside of the Section 106 process, such as land protection measures (including land acquisition), that will augment the current Section 106 mitigation plan Within the Appalachian Trail, activities will occur within the existing ROW, which will not be widened. The above mitigation measures satisfy the requirements under Section 106 of the NHPA for effects to the Appalachian Trail. The NPS received two letters from non-profit organizations seeking to comment about or object to the NPS's compliance with Section 106 of the National Historic Preservation Act (Email to NPS from Preservation New Jersey dated Sept. 28, 2012; and Letter from the New York-New Jersey Trail Conference dated Sept. 25, 2012). The comments in the letters were previously raised by these organizations or other organizations or individuals, and the NPS already addressed these comments through Section 106 meetings and added analyses in the FEIS. Moreover, the NPS, in consultation with the consulting parties, developed binding measures that seek to avoid, minimize, or mitigate potential adverse effects associated with the proposal to address the comments raised by the letters. These measures were discussed in the FEIS, which cross-referenced the draft mitigation plan that was made publicly available on the NPS's Web site prior to publication of the FEIS, and are contained in the ROD. Additionally, the NPS did not provide for a public comment period for the FEIS. See 40 CFR § 1503.1(b). Nevertheless, we note that the dispute resolution provisions contained in this ROD and the Section 106 Mitigation Plan will apply to the future actions covered by or implemented in accordance with this plan.

Delaware Water Gap National Recreation Area

NPS tasks identified under this heading will be completed using an allocation from the Middle Delaware Compensation Fund, as detailed below. The applicant will pay for all other tasks.

• The NPS will require the applicant to make all efforts to avoid any ground disturbing activity that will impact archeological resources. The NPS will also require the applicant to fully excavate affected portions of any archeological site that will be impacted by unavoidable ground disturbance. Any excavation must be done under an Archeological Resources Protection Act (ARPA) permit.

• With the input of Tribes and State Historic Preservation Officers, the NPS will develop an archeological monitoring plan that will identify appropriate locations for archeological and/or tribal monitoring during construction-related ground-disturbing activities. The plan will meet or exceed New Jersey, Pennsylvania, and NPS standards. The NPS will complete the plan prior to the initiation of construction. The applicant will pay for monitoring costs not to exceed $170,000.

• The NPS will prepare a historic properties management plan for DEWA. This plan will identify and analyze historic structures and districts within the park, including historic significance, interpretation value, and potential for future reuse. The NPS will develop this plan in consultation with the interested Section 106 consulting parties, with substantial input from the surrounding communities and the public. The NPS will encourage additional agencies and other organizations who were not consulting parties during the development of the EIS to participate in the development of the historic properties management plan. The park will specifically encourage the involvement of their partner organizations in measures that affect the properties of interest to them.

• The applicant will allocate $12,500,000 from the Middle Delaware Compensation Fund for physical preservation, rehabilitation, and/or restoration of historic structures and landscapes at DEWA. The expenditure of funds will be guided by the results of the historic properties management plan and input from the Section 106 consulting parties. Funds will be focused on the Old Mine Road Historic District and other appropriate locations within the park in Pennsylvania and New Jersey.

• The NPS will consult with the federally-recognized Tribes affiliated with the park to develop a tribal cultural program. This program may include a tribal cultural center in the park, to be established at the Westbrook-Bell House or other appropriate facility identified in the historic properties management plan.

• The applicant will complete vegetative screening or other treatments of cultural landscapes. Specific locations of screening, clearing, or other landscape treatments will be selected by the NPS, in cooperation with the Section 106 consulting parties after the transmission line has been built, when visual effects to historic landscapes are more fully defined. This effort will not exceed a cost of $500,000.

• The NPS will oversee the completion of three National Register nominations or updates to existing nominations, such as updates to the Old Mine Road Historic District and Millbrook Village nominations and/or the completion of a River Road (PA) nomination. The nominations must meet the Pennsylvania or New Jersey

Historic Preservation Office, and National Register of Historic Places standards, and will be considered complete once accepted and approved by the Keeper of the National Register of Historic Places.

• The NPS will oversee the completion of five research studies, such as Historic Structure Reports, Cultural Landscape Reports, historic contexts, or research syntheses. The NPS will solicit input from the Section 106 consulting parties for this project to determine the subjects of the studies.

• The NPS will oversee the completion of four interpretive products, such as tour podcasts, site-specific interpretive signs, scenic byway signs, or popular publications. The NPS will solicit input from the Section 106 consulting parties for this project to determine appropriate products under this stipulation.

• The applicant will provide Delaware Water Gap National Recreation Area $350 per box of artifacts and $500 per linear foot of archeological records created by the surveys, evaluations, and any possible excavations resulting from design and construction under this permit to cover the costs of curation of those artifacts/records. The artifacts and records will be prepared and stored according to the standards in 36 CFR 79. Any human remains or objects subject to the Native American Graves Protection and Repatriation Act (NAGPRA) discovered as a result of this construction permit will be handled according to the regulations at 43 CFR 10.

• The above mitigation measures satisfy the requirements under Section 106 of the NHPA for effects to the Delaware Water Gap National Recreation Area. However, this plan recognizes that there are additional efforts related to this permit underway outside of the Section 106 process, such as land protection measures (including land acquisition), that may also be put in place and will augment the current Section 106 mitigation plan.

Schedule for Completion of Mitigation Measures

Within three years of issuance of the permit, these measures will be complete:

- Historic Properties Management Plan
- National Register nominations for the Appalachian National Scenic Trail
- Identification of locations for vegetative screening/cultural landscape treatments

Within five years of issuance of the permit, these measures will be complete:

- National Register nominations for Delaware Water Gap National Recreation Area
- Interpretive products

Within ten years of issuance of the permit, these measures will be complete:

- Research studies
- Vegetative screening/cultural landscape treatments
- Preservation, rehabilitation, and/or restoration projects of historic structures and cultural landscapes for which funding is provided under this plan.

Project-Wide Stipulations Applicable to Both Parks:

Consulting Party Involvement

• Unless otherwise specified, the NPS will provide the Section 106 consulting parties with 30 days to review and provide comments or input on the implementation of measures identified in this plan. Consulting parties will have the opportunity to review and comment on interim and final drafts, as appropriate, and the identification of properties proposed for rehabilitation. If the NPS is unable to fulfill the commitments outlined in this mitigation plan, it will notify all consulting parties that it will follow the procedures in 36 CFR 800.3 through 800.6 as necessary to address any changes in the mitigation plan. The following conditions will be included as stipulations in the permit, and will apply to all activities covered by the permit. Any activities that occur outside of the actions allowed under the permit will undergo separate Section 106 compliance.

Unanticipated Effects

The permit will include the following stipulations to apply if any new adverse effects are identified as a result of changes in design or from unanticipated archeological discoveries during construction:

1. The NPS and Applicant will determine if avoidance/minimization measures are possible. These include but are not limited to:

- Visual effects from towers/widened ROW
- Physical effects from construction

2. Applicant will present feasibility/infeasibility of avoidance/minimization to NPS; NPS will submit to Section 106 consulting parties for review and comment.

3. If the NPS and applicant determine that avoidance is not technically or environmentally feasible, the applicant will propose minimization efforts for NPS approval. This may include but is not limited to planting vegetative screening at sites identified for which it would be appropriate, or restricting damage to minimal area and/or less significant resources. Data recovery would still be required for any affected portion of archeological sites. The NPS and Section 106 consulting parties will review and discuss any proposed minimization efforts before NPS approval.

4. If the NPS determines minimization efforts are not adequate, the applicant will be responsible for additional mitigation and/or compensation. The NPS will consult with the Section 106 consulting parties to identify appropriate mitigation. Mitigation measures for archeological sites may include, but are not limited to, data recovery, curation costs, and/or production of interpretive materials. Mitigation measures for historic structures and cultural landscapes may include, but are not limited to, physical rehabilitation, development of interpretive materials, planning documents, HABS/HAER/HALS documentation, and National Register nominations. This stipulation only applies if new adverse effects are identified based on unanticipated discoveries during construction, or significant changes in design proposed by the applicant. If the new adverse effects are due to unanticipated ground-disturbing activities, no ground disturbance can occur until the appropriate avoidance or mitigation efforts are determined. The NPS will determine the appropriate mitigation measures, in consultation with the appropriate Section 106 consulting parties, within 5 business days of determining the adverse effect is unavoidable.

Design and Pre-Construction Activities

As the applicant finalizes the placement of transmission towers, crane pads, pull sites, access roads, and other associated features and activities, the applicant will submit the designs and locations to the NPS. Reviews will be limited to the precise, final location of towers, crane pads, and access roads established through discussions with the NPS. Adjustments from existing plans will be made, where possible given engineering and operational constraints, to avoid and minimize potential adverse impacts.

Archeology

• All archeological activities necessary for planning and/or construction will be controlled by a valid Archeological Resources Protection Act (ARPA) permit.

• All areas of possible ground disturbance determined sensitive for archeological resources must have undergone archeological survey (Phase I) and evaluation of identified archeological sites (Phase II) where deemed necessary through review and consultation prior to ground-disturbing activities in that particular location. Survey and evaluation results must have been reviewed by the appropriate Section 106 consulting parties and comments considered by the NPS prior to proceeding.

• The applicant shall protect sites through fencing, matting, or other NPS-approved methods, where appropriate. If archeological sites cannot be protected and will be damaged by ground disturbance, the NPS will oversee their excavation according to a data recovery plan that meets NPS, state, and park-specific standards and is concurred upon by the NPS and the appropriate SHPO and Tribes prior to ground-disturbing activities. DEWA has a standard of archeologically excavating 100% of the affected portion of any archeological site impacted by development within the park.

• An archeological and/or tribal monitor must be present for ground-disturbing activities identified according to the archeological monitoring plan (as identified above) within the boundaries of the park to ensure no previously undiscovered sites are affected; the monitors may decide their presence is not required for individual actions. Applicant must coordinate the schedule of all ground disturbance with the monitors to ensure coverage, where appropriate. The cost for monitoring is included in the NTE estimate identified in the park-specific measures listed above.

• If construction crews make unanticipated discoveries of archeological materials, work will immediately stop in the discovery location. Monitors will make an on-site determination of the likelihood of human remains; if none is expected, monitors will notify the respective park superintendent and cultural resource manager, who will coordinate with the respective SHPO and Tribes for an eligibility determination and treatment method, as needed, within 15 days.

• If construction-related activities uncover human remains, the applicant or its contractors will stop work at the location immediately, and notify park law enforcement, monitors, and the park cultural resources manager. Park law enforcement will determine if the remains are the result of a crime, and, if so, will contact the local coroner to determine whether the remains are of American Indian origin. If the coroner determines that the remains are American Indian, NPS managers will comply with NAGPRA requirements as described in 43 CFR 10 or a park-specific NAGPRA Plan of Action. If the coroner determines that the remains are not American Indian and not the result of a crime, the park superintendent and cultural resource manager will coordinate with the appropriate SHPO to determine disposition of the remains.

• The NPS will require the relocation of ground disturbing activities to avoid human remains, unless technically infeasible. If not technically feasible, the applicant will consult with park and Tribes on the reasons, and discuss alternate strategies, such as re-interment. Applicant is responsible for all costs associated with the delineation of the boundaries of the burial site, if required; relocation of ground disturbance; and costs of re-interment or alternate treatment methods.

• Applicant is responsible for all costs associated with survey/evaluation/mitigation of effects to archeological sites, as well as any costs for construction delays associated with such activities.

• The applicant must prepare an archeological survey plan for review and approval by the DEWA and APPA cultural resources manager for any post-construction ground-disturbing activities related to maintenance and/or improvement of the line within the boundaries of DEWA, APPA, or MDSR for which the NPS will issue permit(s).

Historic Structures/Cultural Landscapes

Physical rehabilitation or restoration efforts on historic structures and cultural landscapes resulting from this project, and conducted by entities other than the National Park Service, will be supervised and inspected by the NPS to ensure they meet the Secretary of the Interior's Standards for the Treatment of Historic Properties. If the efforts do not meet the Standards, the performing entity will make all necessary adjustments, at its own expense, until rehabilitation or restoration meet the Standards.

Dispute Resolution

1. Should any consulting party object in writing to the NPS regarding any action carried out or proposed with respect to any undertakings covered by this plan or to implementation of this plan, the NPS will notify all consulting parties and consult with the objecting party to resolve the objection.

2. Within thirty (30) days after initiating such consultation, if the NPS determines that the objection cannot be resolved through consultation, the NPS will forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.

3. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will exercise one of the following options:

a. Advise the NPS that the ACHP concurs with the NPS proposed response to the objection, whereupon the NPS will respond to the objection accordingly; or

b. Provide the NPS with recommendations, which the NPS will take into account in reaching a final decision regarding its response to the objection.

4. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the NPS may assume the AHCP's concurrence in its proposed response to the objection.

5. The NPS will take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the NPS's responsibility to carry out all the actions under this plan that are not the subjects of the objection will remain unchanged.

Section 7 Consultation

Consultation with USFWS and the National Oceanic and Atmospheric Administration (NOAA) Fisheries has been completed as required by the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act.

NPS has engaged with NOAA Fisheries with a formal consultation letter; on May 13, 2010, NPS received a response from NOAA Fisheries regarding the project. The letter stated that there are American shad between the Delaware Water Gap and the New York border; additionally, there may be also be shad in the Philadelphia reach of the river. Depending on further information regarding the transmission line crossing of the river, NOAA Fisheries may need to be consulted again. In addition, seasonal work restrictions should be incorporated into the project schedule for any work in the Delaware River. NPS received a response to the preliminary alternatives newsletter from NOAA Fisheries on July 22, 2010. The letter noted that while a population of an endangered species could be found in the Delaware River, the population was downstream of the study area. NOAA Fisheries stated that as no listed species were found in the study area, further section 7 consultation will not be required. On January 31, 2012, the NPS received a

letter from NOAA Fisheries indicating that NOAA had reviewed the draft EIS. The letter contained specific comments regarding the presence of the federally endangered shortnose sturgeon, federal candidate species Atlantic sturgeon, and the American shad within the study area during some periods of the year. However, NOAA Fisheries concluded that the detailed discussion of impacts to the river were discussed adequately in the draft EIS, and that no consultation will be required as part of the federal permit process. The letter recommended the use of BMPs to minimize turbidity and other water quality impacts. These letters can be found in appendix I of the final EIS. After initial engagement of USFWS with a consultation letter, USFWS sent an initial response letter on June 11, 2010, regarding the project. The letter noted that the federally listed Indiana bat and bog turtle could be affected by the permit if specific permit conditions were not met. Migratory birds were also addressed, and USFWS provided recommendations on the draft Avian Protection Plan provided by PSE&G. Recommendations for all species included seasonal restrictions, mitigation measures, and additional surveys. NPS received a response to the preliminary alternatives newsletter from USFWS on September 3, 2010, and an additional response on October 21, 2010, with potential impacts of each alternative on federally listed species and suggested recommendations regarding listed species. In a letter dated January 10, 2011, NPS requested more information from USFWS on any federally listed species within the vicinity of the proposed alternatives within the park. The NPS sent a letter to the USFWS on November 16, 2011, requesting comments on the draft Biological Assessment and draft EIS for informal consultation. The USFWS replied to the letter, indicating that the USFWS could not provide advice on the need for formal consultation and noting that the USFWS could not commit to completing consultation by May 2, 2012, as requested. The letter from the USFWS provided some comments on impacts and options on concluding consultation. Another letter received from the USFWS on January 31, 2012, included comments on the draft EIS and on impacts to the bog turtle, Indiana bat, bald eagle, and other migratory birds. The draft Biological Assessment was sent to USFWS on May 21, 2012. Comments were received and the final Biological Assessment was sent to USFWS on June 29, 2012. In a letter dated July 6, 2012, USFWS concurred with the finding by NPS that the preferred alternative was not likely to adversely affect endangered species on NPS lands. These letters and the Final Biological Assessment can be found in appendix I of the final EIS.

In a letter dated February 7, 2011, NPS invited USFWS to become a cooperating agency for this EIS. On March 14, 2011, USFWS responded and agreed to become a cooperating agency, pending a formal Interagency Agreement, and on April 1, 2011, NPS sent a request to USFWS to formalize the Interagency Agreement. The agreement was signed on December 5, 2011.

Conclusion

The above factors and considerations warrant implementing alternative 2 as described and analyzed in the final EIS for Appalachian National Scenic Trail, Delaware Water Gap National Recreation Area, and Middle Delaware National Scenic and Recreational River and this Record of Decision. All practical means to avoid and minimize environmental harm from implementation of the selected alternative have been incorporated, as described in the final EIS and this Record of Decision. The alternative selected for implementation will not impair park resources or values and will allow the NPS to preserve park resources and provide for their enjoyment by future generations. This Record of Decision is not the final agency action for those elements of the decision that require the issuance of a permit or additional ROW. Final agency action to implement this decision will occur when a permit and ROWs incorporating these terms are completed and issued to the applicants.

Record of Decision Attachments

The Record of Decision contains two attachments: A Non-Impairment Determination and the Final Statement of Findings. These attachments are available on the NPS Planning, Environment, and Public Comment System (PEPC). The links to these attachments are provided below.

Attachment A: Non-Impairment Determination

http://parkplanning.nps.gov/document.cfm?parkID=220&projectID=25147&documentID=49997

Attachment B: Final Wetland and Floodplain Statement of Findings

http://parkplanning.nps.gov/document.cfm?parkID=220&projectID=25147&documentID=49997

Dated: October 2, 2012.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 2012–25457 Filed 10–16–12; 8:45 am]

BILLING CODE 4312–JG–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Supplemental Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

On October 10, 2012, the Department of Justice lodged a proposed Supplemental Consent Decree with the United States District Court for the District of Massachusetts in the lawsuit entitled, *United States and Massachusetts* v. *AVX Corporation,* Civil Action No. 83–3882–Y.

In 1983, the United States and Massachusetts commenced suit against AVX Corporation (''AVX'') alleging that AVX was liable to the governments for natural resource damages and later amended the suit to seek response costs under the Superfund statute and other legal authorities. That litigation against AVX was concluded when the governments entered into a Consent Decree with AVX in 1992, resolving AVX's liability subject to the governments' rights to further pursue the claims under a reservation of rights under CERCLA that authorizes the governments to seek additional relief based on unknown conditions or new information and another reservation of rights that allows the governments to seek additional relief from AVX should certain response costs exceed $130.5 million (''reopeners''). This Supplemental Consent Decree resolves AVX's liability for response costs and injunctive relief under both the unknown conditions/new information and cost-related reopeners under the 1992 Consent Decree. Upon entry of the Supplemental Consent Decree, the Unilateral Administrative Order (''UAO'') issued, pursuant to Section 106 of CERCLA, by EPA Region 1 on April 18, 2012 (whose ''effective date'' has currently been delayed until November 1, 2012) will be withdrawn. Mediated negotiations between the governments and AVX that were conducted following EPA's issuance of the UAO resulted in the Supplemental Consent Decree.

Under the terms of the Supplemental Consent Decree, AVX Corporation will pay an additional $366.25 million with interest (in addition to the $59 million, plus interest, that AVX paid for

response costs in the 1992 Consent Decree) in three payments spanning two years and will provide financial assurance to secure the required payments. The governments will release their claims for all response costs and injunctive relief without new ''reopeners'' under Sections 106 and 107 of CERCLA, among other alleged claims. The governments retain their rights to additional relief for natural resource damages pursuant to a reservation of rights in the 1992 Consent Decree.

The publication of this notice initiates a 30-day period for public comment on the Supplemental Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Massachusetts* v. *AVX Corporation,* D.J. Ref. No. 90–11–2–32/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the 30-day comment period, a person may request an opportunity for a public meeting in the affected area in accordance with Section 7003 of RCRA, 42 U.S.C. 6973, regarding the Decree's covenant not to sue under Section 7003. The 30-day comment period may not be extended if a request for a meeting is not timely received to allow for the submission of comments within 30 days. During the public comment period, the Supplemental Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Supplemental Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $19.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $6.50.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–25488 Filed 10–16–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of the individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to serve on the Department's Performance Review Board:

Permanent Membership

Chair—Deputy Secretary—Seth D. Harris.

Vice-Chair—Assistant Secretary for Administration and Management—T. Michael Kerr.

Alternate Vice-Chair—Acting Director, Human Resources Center—Sydney T. Rose.

Executive Secretary—Acting Director, Executive Resources—Kim L.H. Green.

Rotating Membership

ASP Kathleen E. Franks, Director, Office of Regulatory and Programmatic Policy—*appointment expires on 09/30/13*

EBSA Sharon S. Watson, Director, Office of Participant Assistance—*appointment expires on 9/30/13*

EBSA Jonathan Kay, Regional Director (New York)—*appointment expires on 9/30/14*

ILAB Marcia M. Eugenio, Director, Office of Child Labor, Forced Labor Human Trafficking—*appointment expires on 09/30/13*

OASAM Charlotte A. Hayes, Deputy Assistant Secretary for Policy—*appointment expires on 09/30/13*

OASAM Milton A. Stewart, Director, Business Operations Center—*appointment expires on 09/30/13*

OCFO Karen Tekleberhan, Deputy Chief Financial Officer—*appointment expires on 09/30/2014*

OLMS Stephen J. Willertz, Director, Office of Enforcement and International Union Audits—*appointment expires on 09/30/2013*

SOL Michael D. Felsen, Regional Solicitor, Boston—*appointment expires on 09/30/13*

SOL Deborah Greenfield, Deputy Solicitor—*appointment expires on 9/30/13*

SOL Jeffrey L. Nesvet, Associate Solicitor for Federal Employees' and Energy Workers' Compensation—*appointment expires on 09/30/14*

WHD Cynthia C Watson, Regional Administrator (Dallas)—*appointment expires on 09/30/14*

FOR FURTHER INFORMATION CONTACT: Ms. Kim Green, Acting Director, Office of Executive Resources, Room C5508, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave NW., Washington, DC 20210, telephone: (202) 693–7642.

Signed at Washington, DC on 4th day of October, 2012.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2012–25577 Filed 10–16–12; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,204A]

Alternative Management Resources, Inc., Doepker Group, Inc., D.B.A. Time Staffing, Inc., Personnel Management Group, Inc., Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Employer Solutions Staffing Group, LLC, Select Staffing, and Strom Engineering Corporation, Working On-Site At Cooper Tire & Rubber Company, Findlay, Ohio; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 27, 2012, applicable to workers and former workers of Alternative Management Resources, Inc., Doepker Group, Inc., D.B.A. Time Staffing, Inc., Personnel Management Group, Inc., Select Staffing, and Strom Engineering Corporation working on-site at Cooper Tire & Rubber Company, Findlay, Ohio (TA–W–81,204A). The Department's notice of determination was published in the **Federal Register** on February 8, 2012 (77 FR 6589).

At the request of a state workforce official, the Department reviewed the

certification for workers of the subject firm.

New information shows that some workers separated from employment at Personnel Management Group, working on-site at Cooper Tire & Rubber, Findlay, Ohio, had their wages reported through a separate unemployment insurance (UI) tax account under the name Employer Solutions Staffing Group, LLC.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by an increase in imports of like or directly competitive articles with those produced at the subject firm. Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–81,204A is hereby issued as follows:

''All workers of Alternative Management Resources, Inc., Doepker Group, Inc., D.B.A. Time Staffing, Inc., Personnel Management Group, Inc., including workers whose unemployment insurance (UI) wages are reported through Employer Solutions Staffing Group, LLC, Select Staffing, and Strom Engineering Corporation working on-site at Cooper Tire & Rubber Company, Findlay, Ohio, who became totally or partially separated from employment on or after February 13, 2010, through January 27, 2014, and all workers in the group threatened with total or partial separation from employment on January 27, 2012 through January 27, 2014, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 10th day of May, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–25524 Filed 10–16–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,067]

Johnson Controls, Inc. Including On-Site Leased Workers of Valley Staffing and AZ Quality Hudson, Wisconsin; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 15, 2012, applicable to workers and former workers of Johnson Controls, Inc., including on-site leased workers from Valley Staffing, Hudson, Wisconsin (subject firm). The Department's notice of determination was published in the **Federal Register** on March 6, 2012 (77 FR 13354). The workers were engaged in the production of automotive seating.

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from AZ Quality were employed on-site at the Hudson, Wisconsin location of Johnson Controls, Inc.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from AZ Quality working on-site at the Hudson, Wisconsin location of Johnson Controls, Inc.

The amended notice applicable to TA–W–81,067 is hereby issued as follows:

''All workers of Johnson Controls, Inc., including on-site leased workers of Valley Staffing and AZ Quality, Hudson, Wisconsin, who became totally or partially separated from employment on or after February 13, 2010, through February 15, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC, this 9th day of May, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–25528 Filed 10–16–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,177]

Heartland Bakery Company, LLC, a Subsidiary of Maplehurst Bakeries, LLC, Including On-Site Leased Workers From Selectremedy and Westaff, Du Quoin, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 20, 2012, applicable to workers of Heartland Bakery Company, LLC, a subsidiary of Maplehurst Bakeries, LLC, including on-site leased workers from Select Remedy, Du Quoin, Illinois. The Department's notice of determination was published in the **Federal Register** on February 14, 2012 (77 FR 8283). Workers were engaged in employment related to the production of cookies.

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm.

The company reports that workers from Westaff were employed on-site at the Du Quoin, Illinois location of Heartland Bakery Company, LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers of Westaff working on-site at the Du Quoin, Illinois location of Heartland Bakery Company, LLC.

The amended notice applicable to TA–W–81,177 is hereby issued as follows:

''All workers of Heartland Bakery Company, LLC, a subsidiary of Maplehurst Bakeries, LLC, including on-site leased workers from SelectRemedy and Westaff, Du Quoin, Illinois, who became totally or partially separated from employment on or after February 13, 2010, through January 20, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 9th day of May, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–25529 Filed 10–16–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,009]

Birds Eye Foods, LLC; Fulton, NY Plant; A Wholly-Owned Subsidiary of Pinnacle Foods Group LLC; Including On-Site Leased Workers From W L Staff Svces., Inc. and Bemsa Holdings, Inc.; Fulton, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 21, 2011, applicable to workers and former workers of Birds Eye Foods, LLC, Fulton, NY Plant, a wholly-owned subsidiary of Pinnacle Foods Group LLC, including on-site leased workers from W L Staff Svces., Inc., Fulton, New York (subject firm). The Department's notice of determination was published in the **Federal Register** on January 12, 2012 (77 FR 1951).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of frozen vegetable (in three types of cardboard box and plastic packaging: Steamfresh®, Box Sauce, and XL Poly), frozen complete bagged meals (vegetable, protein, starch, and sauce), and frozen fruit products.

The subject firm reports that workers from BEMSA Holdings, Inc. were employed on-site at the Fulton, New York location of Birds Eye Foods, LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers. Based on these findings, the Department is amending this certification to include workers leased from BEMSA Holdings, Inc. working on-site at the Fulton, New York location of Birds Eye Foods, LLC.

The amended notice applicable to TA–W–81,009 is hereby issued as follows:

''All workers of Birds Eye Foods, LLC, Fulton, NY Plant, a wholly-owned subsidiary of Pinnacle Foods Group LLC, including on-site leased workers from W L Staff Svces., Inc. and BEMSA Holdings, Inc., Fulton, New York, who became totally or partially separated from employment on or after February 13, 2010, through December 21, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 9th day of May, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance .

[FR Doc. 2012–25527 Filed 10–16–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *April 30, 2012 through May 4, 2012.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who

received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,384	MTD Consumer Group, Inc., Industrial Plastics Division, MTD Products, Inc., Ameritemps.	Valley City, OH	March 2, 2011.
81,445	Worley Parsons, Worley Parsons Corporation, Gas Unlimited and The Mergis Group, etc.	Pasadena, TX	March 22, 2011.
81,457	Shaw's Supermarket, Supervalu, Inc., Accounts Payable Department	West Bridgewater, MA	January 16, 2012.
81,466	Gates Corporation, Tomkins Ltd., Industrial and Automotive Group, Manpower.	Charleston, MO	March 29, 2011.
81,468	Acuity Brands Lighting, Inc., Sizemore Staffing Leased Workers	Cochran, GA	May 1, 2012.
81,468A	Randstad Staffing, Working On-Site at Acuity Brands Lighting, Inc	Cochran, GA	March 30, 2011.
81,478	Supermedia, LLC, Supermedia, Inc., Information Technology Division	Middleton, MA	March 29, 2011.
81,483	EMD Millipore Corporation, EMD Chemicals Division, Merck KGAA, Greentree, Ajilen and EMD Temps, etc.	Gibbstown, NJ	April 15, 2012.
81,483A	Gloucester County Maintenance and Securities Security Services, EMD Millipore Corp., EMD Chemicals Division, Merck KGAA.	Gibbstown, NJ	March 6, 2011.
81,497	Eastman Kodak Company, Color Paper Testing Lab	Rochester, NY	April 11, 2011.
81,517	Lane Furniture Industries, Inc., Technical Support IT Group, Yash & Prozgroup, Furniture Brands Int'l.	Tupelo, MS	April 4, 2011.
81,524	FT Material Solutions, Inc., Aerotek, UI Wages Were Reported Through Ferrotec, etc.	Fairview, OR	April 17, 2011.
81,540	Rock Creek Athletics, Inc., 203 6th Avenue West, Neff Motivation, Inc.	Grinnell, IA	April 24, 2011.
81,540A	Rock Creek Athletics, Inc., 727 6th Avenue West, Neff Motivation, Inc.	Grinnell, IA	April 24, 2011.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,489	Swift Spinning, Inc., East Columbus Plant, Swift Spinning, LLC	Columbus, GA	April 6, 2011.
81,489A	Swift Spinning, Inc., CYD Plant, Swift Spinning, LLC	Columbus, GA	April 6, 2011.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
81,493	Wynn Oil Company, ITW, Leased Workers from Select Staffing	Azusa, CA	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,355	Sanmina—SCI, Medical Division	Huntsville, AL	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,314	Northwest Hardwoods, Inc., On-Site Leased Workers of Manpower	Tacoma, WA	
81,317	Dana Holding Corporation, Power Technologies Group Division, Manpower.	Milwaukee, WI	
81,346	Epicor Software Corporation	Irvine, CA	
81,357	Tri-Fab Associates, Inc	Fremont, CA	
81,460	Brown Shoe Company, Inc	Sikeston, MO	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
81,378	II–VI, Inc., Infrared Optics-Saxonburg Division	Saxonburg, PA	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
81,530	Allied Tube & Conduit	Morrisville, PA	

I hereby certify that the aforementioned determinations were issued during the period of April 30, 2012 through May 4, 2012. These determinations are available on the Department's Web site *tradeact/taa/taa searchform.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: May 11, 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

Editorial Note: This document was received at the Office of the Federal Register on Friday, October 12, 2012.

[FR Doc. 2012–25526 Filed 10–16–12; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 2012.

The petitions filed in this case are available for inspection at the Office of

the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of May 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[22 TAA petitions instituted between 4/30/12 and 5/4/12]

TA–W	Subject Firm (Petitioners)	Location	Date of institution	Date of petition
81553	Hartford Financial Services Group, Inc. (Company)	Hartford, CT	04/30/12	04/27/12
81554	Hamilton Sundstrand Power Systems (Company)	San Diego, CA	04/30/12	04/29/12
81555	Leggett & Platt (Company)	Clinton, NC	04/30/12	04/13/12
81556	International Automotive Components LLC (Union)	Canton, OH	04/30/12	04/30/12
81557	TE Connectivity (Company)	Middletown, PA	05/01/12	04/27/12
81558	Healthcare Corporation of America (Workers)	Cottonwood Heights, UT.	05/01/12	04/30/12
81559	Unilin Flooring (State/One-Stop)	Dallas, TX	05/01/12	04/30/12
81560	Dex One (Company)	Lone Tree, CO; Bristol, TN; Morrisville, NC, CO.	05/02/12	05/01/12
81561	Helios Solar Works (State/One-Stop)	Milwaukee, WI	05/02/12	05/01/12
81562	Sharp Decisions working on-site at American Honda (State/One-Stop).	Torrance, CA	05/02/12	05/01/12
81563	Steel Heddle (Workers)	Greenville, SC	05/02/12	04/26/12
81564	Century Link (Workers)	nationwide,	05/02/12	04/25/12
81565	Travelers Insurance (Workers)	Hartford, CT	05/03/12	05/02/12
81566	European Touch (State/One-Stop)	Milwaukee, WI	05/03/12	05/01/12
81567	Datex Ohmeda, Inc. d/b/a GE Healthcare (Union)	Madison, WI	05/03/12	05/02/12
81568	Johnson Precision (Workers)	Amherst, NH	05/03/12	05/02/12
81569	Elsevier, Inc. (Workers)	Waltham, MA	05/04/12	05/03/12
81570	Sapa (State/One-Stop)	Parsons, KS	05/04/12	05/02/12
81571	Cadmus Print Services (Union)	Easton, PA	05/04/12	04/16/12
81572	Extrusions, Inc. (State/One-Stop)	Ft. Scott, KS	05/04/12	05/02/12
81573	New Age Industrial Corp. (State/One-Stop)	Norton, KS	05/04/12	05/02/12
81574	Atlas Copco (Workers)	Auburn Hills, MI	05/04/12	04/20/12

[FR Doc. 2012–25525 Filed 10–16–12; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 12–11]

Notice of Quarterly Report (April 1, 2012–June 30, 2012)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter April 1, 2012, through June 30, 2012, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (*www.mcc.gov*) in accordance with section 612(b) of the Act.

Dated: October 16, 2012.

T. Charles Cooper,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Nicaragua *Year:* 2012 *Quarter 3* *Total Obligation:* $112,009,390				
Entity to which the assistance is provided: MCA Nicaragua *Total Quarterly Disbursements* [1]: $ – 28,532				
Property Regularization Project.	$7,180,454	*Increase Investment by strengthening property rights.*	$6,713,553	Automated database of registry and cadastre installed in the 10 municipalities of Leon. Value of land, urban. Value of land, rural. Time to conduct a land transaction. Additional parcels with a registered title, urban. Additional parcels with a registered title, rural. Area covered by cadastral mapping. Cost to conduct a land transaction.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Transportation Project	$57,735,608	*Reduce transportation costs between Leon and Chinandega and national, regional and global markets.*	$56,740,790	Annual Average daily traffic volume: N–I Highway, Section R1. Annual Average daily traffic volume: N–I Highway, Section R2. Annual Average daily traffic volume: Port Sandino (S13). Annual Average daily traffic volume: Villanueva—Guasaule Annual. Average daily traffic volume: Somotillo-Cinco Pinos (S1). Annual average daily traffic volume: León-Poneloya-Las Peñitas. International Roughness Index: N–I Highway, Section R1. International Roughness Index: N–I Highway, Section R2. International Roughness Index: Port Sandino (Section S13). International roughness index: Villanueva: Guasaule. International roughness index: Somotillo-Cinco Pinos. International roughness index: León-Poneloya-Las Peñitas. Kilometers of N–I upgraded: Sections R1 and R2 and S13. Kilometers of NI upgraded: Villanueva—Guasaule. Kilometers of S1 road upgraded. Kilometers of S9 road upgraded.
Rural Development Project	$31,530,722	*Increase the value added of farms and enterprises in the region.*	$31,291,352	Beneficiaries with business plans. *Manzanas (1 manzana = 1.7 hectares),* by sector, harvesting higher-value crops. Beneficiaries with business plans prepared with assistance of Rural Business Development Project. Beneficiaries implementing forestry business plans under Improvement of Water Supplies Activity. Manzanas reforested. Manzanas with trees planted.
Program Administration,[3] Due Diligence, Monitoring and Evaluation.	$15,562,605	.....	$15,272,285	
Pending subsequent reports [4].	.....	.....	$2,685,101	

The negative disbursement relates to a return of funds to MCC upon MCA Nicaragua's closing.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Benin *Year:* 2012 *Quarter 3* *Total Obligation:* $307,298,039				
Entity to which the assistance is provided: MCA Benin *Total Quarterly Disbursements* [1]: $142,167				
Access to Financial Services Project.	$17,688,674	*Expand Access to Financial Services.*	$15,495,910	Value of credits granted by micro-finance institutions (MFIs) (at the national level). Value of savings collected by MFIs (at the national level). Average portfolio at risk >90 days of MFIs at the national level. Operational self-sufficiency of MFIs at the national level. Institutions receiving grants through the established grant facility. MFIs inspected by *Cellule Supervision Microfinance.*

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Access to Justice Project ..	$20,075,580	*Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.*	$19,383,915	Average time to enforce a contract. Percent of firms reporting confidence in the judicial system. Passage of new legal codes. Average time required for Tribunaux de premiere instance (TPI) arbitration centers and courts of first instance to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. Percent of cases resolved in TPI per year. Percent of cases resolved in Court of Appeals per year. Courthouses completed. Average time required to register a business (*société*). Average time required to register a business (sole proprietorship).
Access to Land Project	$32,182,938	*Strengthen property rights and increase investment in rural and urban land.*	$30,978,490	Percent of households investing in targeted urban land parcels. Percent of households investing in targeted rural land parcels. Average cost required to convert occupancy permit to land title through systematic process. Share of respondents perceiving land security in the Conversions from Occupancy permit to land title (PH–TF) or Rural Land Plan (PFR) areas. Preparatory studies completed. Legal and Regulatory Reforms Adopted. Amount of Equipment Purchased. New land titles obtained by transformation of occupancy permit. Land certificates issued within MCA implementation. PFRs established with MCA Benin implementation. Permanent stations installed. Stakeholders trained. Communes with new cadastres. Operational land market information systems.
Access to Markets Project	$188,866,208	*Improve Access to Markets through Improvements to the Port of Cotonou.*	$188,683,879	Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carriers waiting times at the port. Port design-build contract awarded. Annual theft cases. Average time to clear customs. Port meets international port security standards (International Ship and Port Facility Security Code).
Program Administration,[3] Due Diligence, Monitoring and Evaluation.	$48,484,639	.....	$46,877,986	
Pending subsequent reports [4].	.....	.....	$471,714	
Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Ghana Year: 2012 Quarter 3 Total Obligation: $547,009,000				
Entity to which the assistance is provided: MCA Ghana *Total Quarterly Disbursements* [1]*:* $42,629,978				
Agriculture Project	$203,234,837	*Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.*	$201,898,740	Farmers trained in commercial agriculture. Additional hectares irrigated. Hectares under production. Kilometers of feeder road completed. Percent of contracted feeder road works disbursed. Value of loans disbursed to clients from agriculture loan fund. Portfolio-at-risk of Agriculture Loan Fund (percent). Cooling facilities installed. Percent of contracted irrigation works disbursed. Total parcels registered in the Pilot Land Registration Areas. Volume of products passing through post-harvest treatment.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Rural Development Project	$76,521,481	*Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.*	$75,535,187	Students enrolled in schools affected by Education Facilities Sub-Activity. Additional female students enrolled in schools affected by Education Facilities Sub-Activity. Individuals completing internships at Ministries, Departments and Agencies (MDAs) and Metropolitan, Municipal and District Assemblies (MMDAs). Schools rehabilitated. School blocks constructed. Distance to collect water. Households with access to improved water supply. Water points constructed. Kilometers of electricity lines identified and diligence. Inter-bank transactions. Rural banks automated under the Automation/Computerization and Interconnectivity of Rural Banks activity. Rural banks connected to the wide area network (WAN). Agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. N1 Highway: Annualized average daily traffic. N1 Highway: Kilometers of road upgraded. Trunk roads kilometers of roads completed. Percent of contracted trunk road works disbursed. Ferry Activity: Annualized average daily traffic vehicles. Ferry Activity: Annual average daily traffic (passengers). Percent of contracted road works disbursed: N1 Highway, Lot 2. Percent of contracted road works disbursed: N1 Highway, Lot 2. Percent of contracted work disbursed: Ferry and floating dock. Percent of contracted work disbursed: Landings and terminals.
Program Administration,[3] Due Diligence, Monitoring and Evaluation.	$46,621,604	.....	$40,704,077	
Pending subsequent reports [4].	.....	.....	$5,181,487	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: El Salvador *Year:* 2012 *Quarter 3* *Total Obligation:* $460,940,000				
Entity to which the assistance is provided: MCA El Salvador *Total Quarterly Disbursements* [1]: $26,748,928				
Human Development Project.	$89,146,523	*Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.*	$77,194,326	Non-formal trained students that complete the training. Students participating in MCC-supported education activities. Additional school female students enrolled in MCC-supported activities. Instructors trained or certified through MCC-supported activities. Educational facilities constructed/rehabilitated and/or equipped through MCC-supported activities. Households with access to improved water supply. Households with access to improved sanitation. Persons trained in hygiene and sanitary best practices. Households benefiting with a connection to the electricity network. Household benefiting with the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure. Beneficiaries of technical assistance and training—Agriculture. Beneficiaries of technical assistance and training—Agribusiness. Value of agricultural loans to farmers/agribusiness.
Connectivity Project	$269,212,588	*Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.*	$235,293,663	Average annual daily traffic on the Northern Transnational Highway. Travel time from Guatemala to Honduras through the Northern Zone (hours and minutes). Kilometers of roads completed.
Productive Development Project.	$68,215,522	.....	$63,079,228	Employment created. Investment in productive chains by selected beneficiaries. Hectares under production with MCC support. Beneficiaries of technical assistance and training—agriculture. Beneficiaries of technical assistance and training—agribusiness. Amount of Investment Support Fund (FIDENORTE) approved. Value of agricultural loans to farmers/agribusiness. Value of loans guaranteed. Guarantees granted.
Program Administration [3] and Control, Monitoring and Evaluation.	$34,365,368	.....	$25,164,471	
Pending Subsequent Report [4].	.....	.....	$0	
Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Mali *Year:* 2012 *Quarter 3* *Total Obligation:* $460,811,163				
Entity to which the assistance is provided: MCA Mali *Total Quarterly Disbursements* [1]*:* $33,039,103				
Bamako-Senou Airport Improvement Project.	$170,669,220	.....	$121,796,751	Annual foreign visitors, non-residents. Percent of work completed on the airside infrastructure. Percent of work completed on the landside infrastructure. Security and safety deficiencies corrected at the airport.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Alatona Irrigation Project ..	$245,467,572	*Increase the agricultural production and productivity in the Alatona zone of the ON.*	$235,822,867	Cultivation intensity during the dry season (percent). Value of agricultural products sold by farmers (millions of francs CFA). Percent of works completed on Niono-Goma Coura road. hectares under new irrigation. Irrigation system efficiency on Alatona Canal. Percent of contracted irrigation construction works disbursed. Market gardens allocated in Alatona zones to populations affected by the project or New Settler women. Five-hectares farms distributed to new settlers. Rural hectares formalized. Net primary school enrollment rate (in Alatona zone). Functional producer organization. Hectares under production (rainy season). Hectares under production (dry season). *Organisation d'exploitation des reseaux secondaires* (OERSs) or water user's associations established. Active MFI clients.
Industrial Park Project	$2,637,472	*Terminated*	$2,637,472	
Program Administration [3] and Control, Monitoring and Evaluation.	$42,036,897	.....	$31,922,678	
Pending Subsequent Report [4].	.....	.....	$2,580,408	

On May 4, 2012, the MCC Board of Directors concurred with the recommendation of MCC to terminate the Mali Compact following the undemocratic change of government in the country.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Mongolia *Year:* 2012 *Quarter 3* *Total Obligation:* $284,911,363				
Entity to which the assistance is provided: MCA Mongolia *Total Quarterly Disbursements* [1]*:* $20,578,613				
Property Rights Project	$27,802,618	*Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.*	$14,469,888	Wells drilled on leaseholds. Legal and regulatory reforms adopted. Stakeholders trained (Peri-Urban and Land Plots). Herder groups limiting their livestock population to the carrying capacity of their leases on semi-intensive farms. Monetary cost to register land (dollars). Buildings Built/Rehabilitated. Urban parcels formalized. Stakeholders trained (Ger Area Land Plots). Leaseholds Awarded.
Vocational Education Project.	$47,255,637	*Increase employment and income among unemployed and underemployed Mongolians.*	$34,057,626	Students participating in MCC-supported educational facilities. Nongovernmental funding of vocational education (percent). Legal, financial and/or policy reforms adopted. Instructors trained or certified through MCC-supported activities. Labor market assessment completed. Educational facilities constructed/rehabilitated or equipped through MCC-supported activities. Amount of contracted construction/rehabilitation/equipping works disbursed.
Health Project	$38,823,258	*Increase the adoption of behaviors that reduce non-communicable disease sand injuries (NCDIs) among target populations and improved medical treatment and control of NCDIs.*	$22,615,809	Amount of budget allocated by health center. Civil society mobilization. Training of health staff by MCA. Improved services in non-communicable diseases-primary health care (NCD–PHC) facilities (percent). Screening for hypertension (percent). Awareness of working population related to NCD prevention (percent). Early detections of cervical cancer.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Roads Project	$88,440,123	*More efficient transport for trade and access to services.*	$11,144,797	Kilometers of roads completed. Kilometers of roads under design. Percent of contracted roads works disbursed.
Energy and Environmental Project.	$45,266,205	*Increased wealth and productivity through greater fuel use efficiency and decreasing health costs from air.*	$26,300,378	Amount of household savings from decreased fuel costs. Stoves distributed by MCA. Wind power dispatched from substation (million kilowatt hours). Reduced particulate matter concentration.
Rail Project	$369,560	*Terminated*	$369,560	*Terminated.*
Program Administration [3] and Control, Monitoring and Evaluation.	$37,303,959		$20,965.342	
Pending subsequent reports [4].			$6,871,906	

In late 2009, the MCC Board of Directors approved the allocation of a portion of the funds originally designated for the rail project to the expansion of the health, vocational education and property right projects, and the remaining portion to the addition of a road project.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Mozambique *Year:* 2012 *Quarter 3* *Total Obligation:* $506,924,053				
Entity to which the assistance is provided: MCA Mozambique *Total Quarterly Disbursements* [1]: $24,883,975				
Water Supply and Sanitation Project.	$207,385,393	*Increase access to reliable and quality water and sanitation facilities.*	$58,617,571	Percent of urban population with improved water sources. Value of municipal sanitation and drainage systems construction contracts signed. Amount disbursed for municipal sanitation and drainage construction contracts. Value of contracts signed for construction of water systems. Percent of construction contract disbursed for water systems. Percent of urban population with improved sanitation facilities. Percent of rural population with access to improved water sources. Rural water points constructed. Amount disbursed for rural water points construction contracts. Persons trained in hygiene and sanitary best practices.
Road Rehabilitation Project	$176,307,480	*Increase access to productive resources and markets.*	$43,519,396	Percent of roads works contracts disbursed. Kilometers of roads issued ''Take-over Certificates''.
Land Tenure Project	$39,068,307	*Establish efficient, secure land access for households and investors.*	$19,501,034	Proposals for improvement to land legislation submitted (land policy reform). People trained (paralegal courses at Centre for Juridical and Judicial Training (CFJJ), general training at National Directorate of Land and Forest (DNTF), etc.). Rural hectares mapped in site specific activity. Urban parcels mapped. Rural hectares formalized through site specific activity. Urban parcels formalized. Communities delimited and formalized.
Farmer Income Support Project.	$18,400,117	*Improve coconut productivity and diversification into cash crop.*	$11,590,924	Coconut seedlings planted. Survival rate of coconut seedlings. Hectares of alternate crops under production. Farmers trained in pest and disease control. Farmers trained in alternative crop production and productivity enhancing strategies. Farmers trained in planting and post-planting management of coconuts. Farmers using alternative crop production and productivity enhancing strategies.
Program Administration [3] and Control, Monitoring and Evaluation.	$65,762,756		$29,229,784	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Pending Subsequent Report [4].	.....	.....	$7,031,887	
Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]SONYA
Country: Lesotho *Year:* 2012 *Quarter 3* *Total Obligation:* $362,550,999				
Entity to which the assistance is provided: MCA Lesotho *Total Quarterly Disbursements*[1]*:* $21,606,156				
Water Project	$164,027,999	*Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.*	$59,854,827	Physical completion of Temolong water treatment works contract. Physical completion of Urban Water supply works contracts (percent). Feasibility and/or detailed design contracts disbursed for Urban Water systems. People with access to rural water supply. Ventilated improved pit (VIP) latrines built. Rural Water Supply works contracts disbursed (percent). Households with access to improved latrines. Knowledge of good hygiene practices. Households with reliable water services. Enterprises with reliable water services.
Health Project	$121,377,822	*Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.*	$70,941,491	People with HIV still alive 12 months after initiation of treatment. Tuberculosis notification (per 100,000 people). People living with HIV/AIDS receiving antiretroviral treatment. Deliveries conducted in the health facilities. Diarrhea notification at health centers (per 1,000 people). Physical completion of health center facilities (percent). Physical completion of outpatient departments (OPDs) (percent). Physical completion of the Botsabelo facilities (BTS) (percent).
Private Sector Development Project.	$36,470,318	*Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.*	$14,152,223	Time required to enforce a contract. Value of commercial cases. Debit/smart cards issued. Value of registered mortgage bonds. Land parcels regularized and registered. People trained on gender equality and economic rights. Eligible population with ID cards. Percent of population registered in national identification database. Urban land parcels with approved cadastral maps. Stakeholders trained. Enterprises owned by women. Women holding titles to land.
Program Administration [3] and Control, Monitoring and Evaluation.	$40,674,860	.....	$25,684,861	
Pending Subsequent Report [4].	.....	.....	$3,341,560	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Morocco *Year:* 2012 *Quarter 3* *Total Obligation:* $697,500,000				
Entity to which the assistance is provided: MCA Morocco *Total Quarterly Disbursements* [1]*:* $51,098,739				
Fruit Tree Productivity Project.	$328,453,084	*Reduce volatility of agricultural production and increase volume of fruit agricultural production.*	$178,065,797	Farmers trained Agribusinesses assisted. Hectares under production. Value of olive production in rain-fed areas (dollars/year). Area in extension perimeters for which water and soil conservation measures have been implemented (hectares). Value of olive production in irrigated areas (dollars/year). Cumulative area of irrigated perimeters rehabilitated (hectares). Length of irrigation canals resurfaced/rehabilitated (meters). Value of date production in targeted oasis areas (dollars/year). Value of agricultural production. Length of irrigation canals constructed/rehabilitated (meters).
Small Scale Fisheries Project.	$125,174,973	*Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.*	$26,651,719	Landing sites and ports rehabilitated. Mobile fish vendors supplied with and using refrigerated carriers. Volume of fish landed at landing sites. Average price of fish at auction markets.
Artisan and Fez Medina Project.	$94,283,145	*Increase value added to tourism and artisan sectors.*	$25,791,159	Total receiving literacy training. Females receiving literacy training. Total receiving professional training. Females receiving professional training. Gas kilns bought for artisans. Small- and medium-sized enterprise (SME) artisan sales for export. Tourist circuits improved or created. Sites rehabilitated. Training of potters
Enterprise Support Project	$26,811,445	*Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.*	$13,822,606	Survival rate after two years. Days of individual coaching. Beneficiaries trained.
Financial Services Project	$43,700,000	*To be determined (“TBD”).*	$27,168,788	Portfolio at risk at 30 days. Clients of microcredit associations reached through mobile branches. Active clients. Value of loan disbursements to Jaida.
Program Administration [3] and Control, Monitoring and Evaluation.	$79,077,353	.....	$48,474,119	
Pending Subsequent Report [4].	.....	.....	$5,847,622	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Tanzania *Year:* 2012 *Quarter 3* *Total Obligation:* $698,135,999				
Entity to which the assistance is provided: MCA Tanzania *Total Quarterly Disbursements* [1]: $31,790,382				
Energy Sector Project	$207,465,542	*Increase value added to businesses.*	$99,683,291	Current power customers: Morogoro D1, Morogoro T1, Morogoro T2 & T3, Tanga D1, Tanga T1, Tanga T2 & T3, Mbeya D1, Mbeya T1, Mbeya T2 & T3, Iringa D1, Iringa T1, Iringa T2 & T3, Dodoma D1, Dodoma T1, Dodoma T2 & T3, Mwanza D1, Mwanza T1 and Mwanza T2 & T3. Collection efficiency (Morogoro). Collection efficiency (Tanga). Collection efficiency (Mbeya). Collection efficiency (Iringa). Collection efficiency (Dodoma). Collection efficiency (Mwanza). Collection efficiency (Zanzibar). Technical and nontechnical losses (Morogoro). Technical and nontechnical losses (Tanga). Technical and nontechnical losses (Mbeya). Technical and nontechnical losses (Iringa). Technical and nontechnical losses (Dodoma). Technical and nontechnical losses (Mwanza). Technical and nontechnical losses (Zanzibar).
Transport Sector Project ...	$368,847,428	*Increase cash crop revenue and aggregate visitor spending.*	$165,791,113	Kilometers upgraded/completed: All Mainland road segments. Percent disbursed on construction works: Tunduma Sumbawanga. Percent disbursed on construction works: Tanga Horohoro. Percent disbursed on construction works: Namtumbo Songea. Percent disbursed on construction works: Peramiho Mbinga. Kilometers upgraded/completed: Pemba. Percent disbursed on construction works: Pemba. Percent disbursed on construction works: Mafia Island.
Water Sector Project	$65,692,145	*Increase investment in human and physical capital and to reduce the prevalence of water-related disease.*	$30,627,441	Customers (domestic and nondomestic)—Lower Ruvu Plant. Customers (domestic and nondomestic)—Morogoro. Volume of water produced—Lower Ruvu (millions of liters per day). Volume of water produced—Morogoro (millions of liters per day). Operations and maintenance cost recovery—Lower Ruvu. Operations and maintenance cost recovery—Morogoro. Percent disbursed on construction contract—Lower Ruvu. Percent disbursed on construction contract—Morogoro.
Program Administration [3] and Control, Monitoring and Evaluation.	$56,130,884	.....	$24,549,151	
Pending Subsequent Report [4].	.....	.....	$99,857	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Burkina Faso *Year:* 2012 *Quarter 3* *Total Obligation:* $478,685,358				
Entity to which the assistance is provided: MCA Burkina Faso *Total Quarterly Disbursements* [1]: $18,955,202				
Roads Project	$194,130,681	*Enhance access to markets through investments in the road network.*	$15,227,750	Annual average daily traffic: *Dedougou-Nouna.* Annual average daily traffic: Nouna-Bomborukuy. Annual average daily traffic: Bomborukuy-Mali border. Kilometers of road under works contract. Kilometers of road under design/feasibility contract. Access time to the closest market via paved roads in the Sourou and Comoe (minutes). Kilometers of road under works contract. Kilometers of road under design/feasibility contract. Personnel trained in procurement, contract management and financial systems. Periodic road maintenance coverage rate (for all funds) (percent).
Rural Land Governance Project.	$59,934,615	*Increase investment in land and rural productivity through improved land tenure security and land management.*	$14,771,510	Trend in incidence of conflict over land rights reported in the 17 pilot communes (annual percent rate of change in the occurrence of conflicts over land rights). Legal and regulatory reforms adopted. Stakeholders reached by public outreach efforts. Personnel trained. Rural land service offices installed and functioning. Rural hectares formalized. Extent of confidence in land tenure security. Parcels registered in Ganzourou project area.
Agriculture Development Project.	$141,910,059	*Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.*	$34,891,674	New irrigated perimeters developed in Di (hectares). Value of signed contracts for irrigation systems works. Farmers trained. Agro-sylvo-pastoral groups that receive technical assistance. Loans provided by the rural finance facility. Volume of loans intended for agro-sylvo-pastoral borrowers (million francs CFA).
Bright II Schools Project	$26,829,669	*Increase primary school completion rates.*	$26,582,359	Girls/boys graduating from BRIGHT II primary schools. Percent of girls regularly attending (90 percent attendance) BRIGHT schools. Girls enrolled in the MCC/USAID-supported BRIGHT schools. Boys enrolled in the MCC/USAID-supported BRIGHT schools. Additional classrooms constructed. Teachers trained through 10 provincial workshops.
Program Administration [3] and Control, Monitoring and Evaluation.	$56,138,545	.....	$28,462,114	
Pending Subsequent Report [4].	.....	.....	$0	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Namibia *Year:* 2012 *Quarter 3* *Total Obligation:* $304,477,815				
Entity to which the assistance is provided: MCA Namibia *Total Quarterly Disbursements* [1]: $13,451,767				
Education Project	$144,976,558	*Improve the quality of the workforce in Namibia by enhancing the equity and effectiveness of basic.*	$35,340,885	Students (any level) participating in the 47 schools sub-activity. Percent of contracted construction works disbursed for 47 schools. Textbooks delivered. Educators trained to be textbook management trainers. Educators trained to be textbook utilization trainers. Percent disbursed against works contracts for Regional Study Resource Centers Activity (RSRCs). Percent disbursed against construction, rehabilitation, and equipment contracts for Community Skills and Development Centres (COSDECS).
Tourism Project	$66,994,941	*Grow the Namibian tourism industry with a focus on increasing income to households in communal.*	$11,872,173	Percent of condition precedents and performance targets met for Etosha National Park (ENP) activity. Game translocated with MCA support. Unique visits on Namibia Tourism Board (NTB) Web site. Leisure tourist arrivals. North American tourism businesses (travel agencies and tour operators) that offer Namibian tours or tour packages. Value of grants issued by the conservancy grant fund (Namibian dollars). Amount of private sector investment secured by MCA assisted conservancies (Namibian dollars). Annual gross revenue to conservancies receiving MCA assistance.
Agriculture Project	$47,835,474	*Enhance the health and marketing efficiency of livestock in the NCAs of Namibia and to increase income.*	$15,603,155	Participating households registered in the Community-Based Rangeland and Livestock Management (CBRLM) sub-activity. Cattle tagged with radio frequency identification (RFID) tags. Percent disbursed against works contracts for State Veterinary Offices. Value of grant agreements signed under Livestock Market Efficiency Fund. Indigenous natural product (INP) producers mobilized and trained. Value of grant agreements signed under INP Innovation Fund.
Program Administration [3] and Control, Monitoring and Evaluation.	$44,670,841	.....	$17,792,317	
Pending Subsequent Report [4].	.....	.....	$6,212,840	
Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Moldova *Year:* 2012 *Quarter 3* *Total Obligation:* $262,000,000				
Entity to which the assistance is provided: MCA Moldova *Total Quarterly Disbursements* [1]: $3,914,008				
Road Rehabilitation Project	$132,840,000	*Enhance transportation conditions.*	$606,764	Reduced cost for road users. Average annual daily traffic. Road maintenance expenditure. Kilometers of roads completed. Percent of contracted roads works disbursed. Kilometers of roads under works contracts. Resettlement action plan implemented. Final design. Trafficking in persons (TIP) training participants.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Transition to High Value Agriculture Project.	$101,773,402	*Increase incomes in the agricultural sector; Create models for transition to HVA in CIS areas and an enabling environment (legal, financial and market) for replication.*	$11,549,102	Hectares under improved or new irrigation. Centralized irrigation systems rehabilitated. Percent of contracted irrigation feasibility and/or design studies disbursed. Value of irrigation feasibility and/or detailed design contracts signed. Water user associations (WUA) achieving financial sustainability. WUA established under new law. Revised water management policy framework—with long-term water rights defined—established. Contracts of association signed. Additionality factor of access to agricultural finance investments. Value of agricultural and rural loans. All loans. All loans (female). High value agriculture (HVA) Post-Harvest Credit Facility launched. HVA Post-Harvest Credit Facility Policies and Procedures Manual (PPM) Finalized. Farmers that have applied improved techniques (Growing High Value Agriculture Sales [GHS]). Farmers that have applied improved techniques (GHS) (female). Farmers trained. Farmers trained (female). Enterprises assisted. Enterprises assisted (female).
Program Administration [3] and Monitoring and Evaluation.	$27,386,598	.....	$3,341,607	
Pending Subsequent Report [4].	.....	.....	$ − 292,108	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Philippines *Year:* 2012 *Quarter 3* *Total Obligation:* $432,829,526				
Entity to which the assistance is provided: MCA Philippines *Total Quarterly Disbursements* [1]*:* $9,834,492				
Kalahi-CIDSS Project	$120,000,000	*Improve the responsiveness of local governments to community needs, encourage communities to engage in development activities..*	$7,500,655	Percent of Municipal Local Government Units that provide funding support for Kalahi-CIDSS (KC) subproject operations and maintenance. Completed KC subprojects implemented in compliance with technical plans and within schedule and budget. Percent of communities with KC subprojects that have sustainability evaluation rating of satisfactory or better.
Secondary National Roads Development Project.	$213,412,526	*Reduce transportation costs and improve access to markets and social services.*	$9,699,458	Motorized traffic time cost. Maintenance savings. Kilometers of road sections completed. Value of road construction contracts disbursed. Value of signed road feasibility and design contracts. Value of road feasibility and design contracts disbursed.
Revenue Administration Reform Project.	$54,300,000	*Increase tax revenues over time and support the Department of Finance's initiatives to detect and deter corruption within its revenue agencies.*	$3,928,373	Audits performed. Revenue District Offices using the electronic tax information system (eTIS). Percent of audit completed in compliance with prescribed period of 120 days. Percent of audit cases performed using automated audit tool (AATs). Successful case resolutions. Personnel charged with graft, corruption, lifestyle and/or criminal cases. Time taken to complete investigation (average).
Program Administration [3] and Control, Monitoring and Evaluation.	$45,117,000	.....	$2,149,258	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Pending Subsequent Reports [4].	.....	.....	$12,074,532	
Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures* [2]
Country: Senegal *Year:* 2012 *Quarter 3* *Total Obligation:* $540,000,000				
Entity to which the assistance is provided: MCA Senegal *Total Quarterly Disbursements* [1]*:* $1,937,680				
Road Rehabilitation Project	$324,712,499	*Expand Access to Markets and Services.*	$2,067,948	Value of contracts signed for the feasibility, design, supervision and program management of the RN2 and RN6 National Roads. Value of contracts signed for construction of the RN2 and RN6 National Roads. Kilometers of roads rehabilitated on the RN2 National Road. Annual average daily traffic Richard-Toll—Ndioum. Percent change in travel time on the RN2. International Roughness Index on the RN2 (lower number = smoother road). Kilometers of roads covered by the contract for the studies, the supervision and management of the RN2 National Road. Kilometers of roads rehabilitated on the RN6 National Road. Annual average daily traffic Ziguinchor—Tanaff. Annual average daily traffic Tanaff—Kolda. Annual average daily traffic Kolda—Kounkané. Percent change in travel time on the RN6 National Road. International Roughness Index on the RN6 National Road (lower number = smoother road). Kilometers of roads covered by the contract for the studies, the supervision and management of the RN6 National Road.
Irrigation and Water Resources Management Project.	$170,008,860	*Improve productivity of the agricultural sector.*	$416,317	Tons of irrigated rice production. Potentially irrigable lands area (Delta and Ngallenka). Hectares under production. Total value of feasibility, design and environmental study contracts signed for the Delta and the Ngallenka (including resettlement action plans). Cropping intensity (hectares under production per year/cultivable hectares) (Delta and Ngallenka). Hectares mapped to clarify boundaries and land use types. Percent of new conflicts resolved. People trained on land security tools.
Program Administration [3] and Monitoring and Evaluation.	$45,278,641	.....	$6,893,667	
Pending Subsequent Report [4].	.....	.....	$1,413,529	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Jordan *Year:* 2012 *Quarter 3* *Total Obligation:* $547,009,000				
Entity to which the assistance is provided: MCA Jordan *Total Quarterly Disbursements [1]:* $102,261				
Water Network Project	$102,570,034	*Improve the overall drinking water system efficiency in Jordan's Zarqa Governorate.*	.....	Network water consumption per capita (residential and non-residential); liters/capita/day. Operating cost coverage—Water Authority Jordan Zarqa. Non-revenue water. Continuity of supply time; hours per week. Restructure and rehabilitate primary and secondary pipelines (kilometers). Restructure and rehabilitate tertiary pipelines (kilometers). Value disbursed of water construction contracts—Infrastructure Activity and Water Smart Homes Activity.
Wastewater Network Project.	$58,224,386	*Improve the overall waste water system efficiency in Jordan's Zarqa Governorate.*	.....	Sewer blockage events (annual). Volume of wastewater collected; cubic meters/year/million. Residential population connected to the sewer system. Expand Network (kilometers). Value disbursed of sanitation construction contracts.
As Samra Wastewater Treatment Plant Expansion Project.	$97,521,000	*Increase the volume of treated waste water available as a substitute for fresh water in agriculture use.*	.....	Treated wastewater used in agriculture (as a percent of all water used for irrigation in Northern and Middle Jordan Valley). Value disbursed of construction contracts. Total engineering, procurement and construction (EPC) cost of As-Samra Expansion.
Program Administration [3] and Control, Monitoring and Evaluation.	$19,784,580	.....	$102,261	
Pending subsequent reports [4].				

[1] In this report, due to accounting changes, MCC shows disbursements, which are cash outlays, rather than expenditures.
[2] These measures are the same Key Performance Indicators that MCC reports each quarter. The Key Performance Indicators may change over time to more accurately reflect compact implementation progress. The unit for these measures is "number of" unless otherwise specified.
[3] Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
[4] These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).
The following MCC Compacts are closed and, therefore, do not have any quarterly disbursements: Armenia, Cape Verde, Georgia, Honduras, Madagascar, and Vanuatu.

619(b) Transfer or Allocation of Funds

United States Agency to which Funds were Transferred or Allocated	Amount	Description of program or project
None	None	None

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BILLING CODE 9211–03–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 16, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records

Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–08–2, 1 item, 1 temporary item). Master files of an electronic system used to track food product samples.

2. Department of Defense, Army and Air Force Exchange Service (N1–334–12–1, 1 item, 1 temporary item). Case files relating to debts owed by individuals including dishonored checks, liability claims, and bank notices.

3. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2012–0015, 1 item, 1 temporary item). Agreement forms used to receive reimbursements filed by hospitals who participate in graduate medical education programs.

4. Department of Health and Human Services, Office of the Secretary (DAA–0468–2012–0004, 1 item, 1 temporary item). Records of the Office of the Assistant Secretary for Preparedness and Response, including exercise plans, training documents, agendas, situational manuals, lessons learned, and after action reports related to the preparation cycle for emergency public health and medical response.

5. Department of Justice, Civil Rights Division (DAA–0060–2011–0021, 1 item, 1 temporary item). Master files of an electronic information system used to track employee language skills.

6. Department of Justice, Federal Bureau of Investigation (N1–65–11–42, 4 items, 4 temporary items). Records related to processing and maintaining lab DNA samples.

7. Department of State, Bureau of Administration (DAA–0059–2012–0007, 1 item, 1 temporary item). Master files of an electronic information system containing case files related to domestic financial assistance.

8. Department of State, Bureau of Information Resource Management (DAA–0059–2012–0008, 1 item, 1 temporary item). Master files of an electronic information system used to centralize data from other administrative systems of the Department.

9. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–11–2, 15 items, 15 temporary items). Inputs, outputs, master files, system documentation of electronic information systems and associated records used to ensure the physical qualifications of commercial motor vehicle drivers.

10. Department of Transportation, National Highway Traffic Safety Administration (N1–416–11–10, 1 item, 1 temporary item). Master files of an electronic information system used to process rebates.

11. Consumer Financial Protection Bureau, Agency-wide (N1–587–12–1, 3 items, 1 temporary item). Records consist of raw footage of historically significant videos. Proposed for permanent retention are final videos and scripts.

12. Office of the Director of National Intelligence, Civil Liberties and Privacy Office (N1–576–11–7, 13 items, 8 temporary items). Records include internal briefings, Web site records, non-substantive drafts and reference materials. Also included are records related to policy development and complaint files typically covered by the General Records Schedule. Proposed for permanent retention are compliance and assessment reports, System of Records Notices, community level board records, external speeches, and substantive working papers.

13. Office of Personnel Management, Human Resource Solutions (DAA–0478–2012–0008, 1 item, 1 temporary item). Application information for students accepted into a scholarship program.

Dated: October 9, 2012.

Laurence Brewer,

Director, National Records Management Program.

[FR Doc. 2012–25485 Filed 10–16–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee (NISPPAC)

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for the following committee meeting to discuss National Industrial Security Program policy matters.

DATES: The meeting will be held on November 14, 2012 from 10:00 a.m. to 12:00 p.m.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Friday, November 9, 2012. ISOO will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: David O. Best, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue NW., Washington, DC 20408, telephone number (202) 357–5123, or at *david.best@nara.gov.* Contact *ISOO at ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

Dated: October 11, 2012.

Patrice Little Murray,

Acting Committee Management Officer.

[FR Doc. 2012–25479 Filed 10–16–12; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0228]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) invites public comment regarding our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 71, Packaging and Transportation of Radioactive Material.

2. *Current OMB approval number:* 3150–0008.

3. *How often the collection is required:* On occasion. Application for package certification may be made at any time. Required reports are collected and evaluated on a continuous basis as events occur.

4. *Who is required or asked to report:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

5. *The number of annual respondents:* 250.

6. *The number of hours needed annually to complete the requirement or request:* 59,782 hours (54,208 hrs reporting + 5,574 recordkeeping).

7. *Abstract:* NRC regulations in 10 CFR Part 71 establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

Submit, by December 17, 2012, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied, for a fee, publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Comments submitted should reference Docket No. NRC–2012–0228. You may submit your comments by any of the following methods: Electronic comments: go to *http://www.regulations.gov* and search for Docket No. NRC–2012–0228. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 11th day of October, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–25489 Filed 10–16–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0242]

In the Matter of Timothy M. Goold; IA–12–014; Confirmatory Order (Effective Immediately)

I

Mr. Timothy Goold was employed as a radiographer at JANX Integrity Group, Inc. (JANX), at a temporary jobsite on Spy Island, Alaska during July 2011. JANX is the holder of the U.S. Nuclear Regulatory Commission (NRC or Commission's) Materials License No. 21–16560–01 which authorized, at the time, specific activities involving byproduct, source, and/or special nuclear material.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on August 24, 2012.

II

On July 27, 2011, the NRC conducted an unannounced inspection of JANX's radiographic activities on Spy Island. As a result of the inspector's observations, on October 31, 2011, the NRC's Office of Investigations (OI) began an investigation at JANX. Based on the evidence developed during its investigation, OI substantiated that 1) Mr. Goold willfully performed radiography without a second person present, and (2) Mr. Goold willfully impeded the NRC's inspection by avoiding the NRC inspector. In a letter dated March 15, 2012, (ML12076A253) the NRC informed Mr. Goold that the NRC was considering escalated enforcement action for two apparent violations of section 30.10 of Title 10 of the *Code of Federal Regulations* (CFR), the NRC's deliberate misconduct rule. The NRC offered Mr. Goold the opportunity to respond in writing, request a predecisional enforcement conference or request ADR with the NRC in an attempt to resolve issues associated with this matter. Mr. Goold provided a written response on April 9, 2012 (ML12121A669).

On June 25, 2012, the NRC issued an Order to Mr. Goold based on a review of all the available information including Mr. Goold's April 9, 2012, letter and the results of the inspection and OI investigations. The NRC concluded that Mr. Goold twice engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1). First, Mr. Goold engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) by performing radiography without a second person present causing JANX to be in violation of 10 CFR 34.41(a). Second, Mr. Goold again engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) when he avoided the inspector by leaving when the inspector tried to question him regarding the whereabouts of the second qualified radiographer, causing JANX to be in violation of 10 CFR 30.52(a).

Subsequent to the issuance of the NRC's June 25, 2012 Order, Mr. Goold requested to participate in the NRC's alternate dispute resolution (ADR) process. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement and resolving any differences regarding the dispute. On August 24, 2012, the NRC and Mr. Goold met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, Mr. Goold requested use of the NRC ADR process to resolve differences he had with the NRC. During that ADR session, a preliminary settlement agreement or an Agreement in Principle was reached. As part of the Agreement in Principle, the parties agreed to disagree on whether Mr. Goold engaged in deliberate misconduct as discussed in the Order (IA–12–014) issued to Mr. Goold on June 25, 2012.

The remaining elements of the Agreement in Principle consisted of the following:

A. Work Restrictions

1. Mr. Timothy Goold will not engage in NRC-licensed activities until the issuance of the Confirmatory Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This means that during the prohibition period Mr. Goold is prohibited from performing, supervising, assisting or otherwise engaging in (1) industrial radiographic operations in NRC jurisdiction for an Agreement State licensee that are conducted under a general license pursuant to 10 CFR 150.20; (2) industrial radiographic operations for an NRC licensee including but not limited to, radiography conducted under the authority of a license issued pursuant to 10 CFR Part 34; and (3) any other licensed activity in NRC jurisdiction. It was mutually agreed that the NRC will consider that the prohibition period began when Mr. Goold voluntarily informed his employer on or about July 1, 2012, of the terms of the June 25, 2012, Order and ceased performing licensed activities and that the prohibition will continue until the issuance of the Confirmatory Order.

2. For a 2-year period from the effective the date of the Confirmatory Order, Mr. Goold is prohibited from engaging in NRC-licensed industrial radiographic operations unless he is working under the direct supervision of a radiographer who meets the requirements of 10 CFR 34.43.

3. For a 2-year period from the effective date of the Confirmatory Order, Mr. Goold is prohibited from working for any NRC licensee as an Area Supervisor, Radiation Safety Officer, trainer, or in any other supervisory position while in NRC jurisdiction. This includes the situation where he works for an Agreement State licensee performing work in NRC jurisdiction under reciprocity.

B. Notifications

1. For a 2-year period from the effective date of the Confirmatory Order, Mr. Goold will notify NRC Region III office within 15 days of his acceptance of any employment with an NRC or Agreement State licensee. Mr. Goold may provide this notification by email to the attention of the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III at the email address listed in B.2.

2. For a 2-year period from the effective date of the Confirmatory Order, Mr. Goold will notify NRC Region III office on a weekly basis of where he will be performing radiography. Mr. Goold will provide that notification to the NRC by no later than 1200 hours Eastern Time each Sunday for activities performed the following 7 days. Mr. Goold may provide this notification by email to the attention of the Director, Division of Nuclear Materials Safety; U.S. Nuclear Regulatory Commission, Region III, email: *R3.Reciprocity@nrc.gov.* The email will contain the name and location of the radiography site where Mr. Goold expects to be performing radiography and which days he expects to be shooting. If Mr. Goold does not expect to be performing radiography during the week, he will provide notification so stating.

3. For a 2-year period from the effective date of the Confirmatory Order, in order to ensure NRC licensees are aware of the limitations on Mr. Goold's NRC licensed activities, Mr. Goold will provide a copy of the Confirmatory Order to his employers who are either NRC licensees or are Agreement State licensees performing work in the NRC's jurisdiction under reciprocity.

4. For a 2-year period from the effective date of the Confirmatory Order and while performing industrial radiographic operations at an NRC or Agreement State licensee, Mr. Goold will provide the NRC Region III office a copy of the semi-annual audit report performed by the licensee under 10 CFR 34.43(e) or under the applicable Agreement State requirement and any additional audits that Mr. Goold's employer performs. If the licensee indicates that the inspection results were not documented, then Mr. Goold

will send in a letter attesting to whom he spoke to in the licensee's office and upon what date, such that the NRC can confirm the information. The letter will be addressed to the Director of the Division of Nuclear Materials Safety, 2443 Warrenville Road, Suite 210, Lisle, IL 60532. Alternatively, the email address in item B.2 above can be used.

5. Mr. Goold recognizes an opportunity for other radiographers to learn from his actions. Mr. Goold will convey his personal lessons learned from the events by preparing an article. Mr. Goold agrees that the article will contain a description of the events of July 27, 2011; what he learned from them, including his understanding of why it's important to have two people present during all radiographic operations and why it's important to cooperate with NRC inspectors; what he would do differently in the future; and the consequences of his behavior. Mr. Goold will submit the draft article to the NRC Region III Enforcement/Investigations Officer within 120 days of the issuance of the Confirmatory Order and will submit the final article to a trade publication (such as the American Society for Nondestructive Testing) for possible publication, after providing 30 days for NRC comment, and no later than 180 days of the date of the confirmatory order. Within 7 days of Mr. Goold's submission of the article, Mr. Goold will provide a copy of that submission to the NRC Region III Director of the Division of Nuclear Materials Safety, 2443 Warrenville Road, Suite 210, Lisle, IL 60532. Alternatively, the email address in item B.2 above can be used. The NRC, at its sole discretion, may also publish the article in a future Office of Federal and State Materials and Environmental Management Programs (FSME) Newsletter.

6. Mr. Goold recognizes an opportunity to expand upon his previous response to the NRC. Mr. Goold will provide an expanded response which will address in more detail what Mr. Goold has learned from the events of July 27, 2011, including his understanding of why it's important to have two people present during all radiographic operations and why it's important to cooperate with NRC inspectors; what he would do differently in the future; and the consequences of his behavior. Mr. Goold will submit this response to the NRC Region III Director of the Division of Nuclear Materials Safety, 2443 Warrenville Road, Suite 210, Lisle, IL 60532 within 180 days of the Confirmatory Order. Alternatively, the email address in item B.2 above can be used.

C. Training

Mr. Goold has stated that he has completed additional training in industrial radiography, radiation safety, and the corresponding NRC regulations in December 2011—January 2012, which will be acknowledged in the Confirmatory Order. Mr. Goold agreed to provide documentation of the training to the NRC Region III Enforcement/Investigations Officer. If the training does not meet or exceed 40 hours of instruction in the subjects described in 10 CFR 34.43(g), Mr. Goold agreed to attend additional training that would satisfy that level of instruction within 180 days of issuance of the Confirmatory Order.

D. Rescission of June 25, 2012 NRC Order

The NRC agrees to rescind the Order previously issued to Mr. Goold on June 25, 2012. The NRC agrees not to pursue any further enforcement action concerning the violations described in the June 25, 2012 Order. This does not prohibit NRC from taking enforcement action in accordance with the NRC Enforcement Policy if Mr. Goold commits a similar violation in the future or violates the Confirmatory Order stemming from this Agreement in Principle.

IV

On August 27, 2012, Mr. Goold provided the NRC with training records demonstrating that he had successfully completed 21.5 hours of instructional training covering the majority of the areas in 10 CFR 34.43(g). Therefore, Section V.C of the Order requires that Mr. Goold attend training to satisfy an additional 18.5 hours of instruction in the subjects described in 10 CFR 34.43(g), including the requirements of pertinent federal regulations and case histories of accidents in radiography within 180 days of issuance of the Confirmatory Order.

On October 1, 2012, Mr. Goold consented to issuing this Order with the commitments, as described in Section V below. Mr. Goold further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

Since Mr. Goold has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that the Mr. Goold's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Goold's commitments be confirmed by this Order. Based on the above and Mr. Goold's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

A. Work Restrictions

1. For a 2-year period from the effective date of the Confirmatory Order, Mr. Goold is prohibited from engaging in NRC-licensed industrial radiographic operations unless he is working under the direct supervision of a radiographer who meets the requirements of 10 CFR 34.43.

2. For a 2-year period from the effective date of the Confirmatory Order, Mr. Goold is prohibited from working for any NRC licensee as an Area Supervisor, Radiation Safety Officer, trainer, or in any other supervisory position while in NRC jurisdiction. This includes the situation where he works for an Agreement State licensee performing work in NRC jurisdiction under reciprocity.

B. Notifications

1. For a 2-year period from the effective date of the Confirmatory Order, Mr. Goold will notify NRC Region III office within 15 days of his acceptance of any employment with an NRC or Agreement State licensee. Mr. Goold may provide this notification by email to the attention of the Director, Division of Nuclear Materials Safety; U.S. Nuclear Regulatory Commission, Region III at the email address listed in B.2.

2. For a 2-year period from the effective date of the Confirmatory Order, Mr. Goold will notify NRC Region III office on a weekly basis of where he will be performing radiography. Mr. Goold will provide that notification to the NRC by no later than 1200 hours Eastern Time each Sunday for activities performed the following 7 days. Mr. Goold may provide this notification by email to the attention of the Director, Division of Nuclear Materials Safety; U.S. Nuclear Regulatory Commission, Region III, email: *R3.Reciprocity@nrc.gov*. The email will contain the name and location of the

radiography site where Mr. Goold expects to be performing radiography and which days he expects to be shooting. If Mr. Goold does not expect to be performing radiography during the week, he will provide notification so stating.

3. For a 2-year period from the effective date of the Confirmatory Order, in order to ensure NRC licensees are aware of the limitations on Mr. Goold's NRC licensed activities, Mr. Goold will provide a copy of the Confirmatory Order to his employers who are either NRC licensees or are Agreement State licensees performing work in the NRC's jurisdiction under reciprocity.

4. For a 2-year period from the effective date of the Confirmatory Order and while performing industrial radiographic operations at an NRC or Agreement State licensee, Mr. Goold will provide the NRC Region III office a copy of the semi-annual audit report performed by the licensee under 10 CFR 34.43(e) or under the applicable Agreement State requirement and any additional audits that Mr. Goold's employer performs of Mr. Goold's activities. If the licensee indicates that the audit results were not documented, then Mr. Goold will send in a letter attesting to whom he spoke to in the licensee's office and upon what date, such that the NRC can confirm the information. The letter will be addressed to the Director of the Division of Nuclear Materials Safety, 2443 Warrenville Road, Suite 210, Lisle, IL, 60532. Alternatively, the email address in item B.2 above can be used.

5. Mr. Goold recognizes an opportunity for other radiographers to learn from his actions. Mr. Goold will convey his personal lessons learned from the events by preparing an article. Mr. Goold agrees that the article will contain a description of the events of July 27, 2011; what he learned from them, including his understanding of why it's important to have two people present during all radiographic operations and why it's important to cooperate with NRC inspectors; what he would do differently in the future; and the consequences of his behavior. Mr. Goold will submit the draft article to the NRC Region III Enforcement/Investigations Officer within 120 days of the issuance of the Confirmatory Order and will submit the final article to a trade publication (such as the American Society for Nondestructive Testing) for possible publication, after providing 30 days for NRC comment, and no later than 180 days of the date of the confirmatory order. Within 7 days of Mr. Goold's submission of the article to a trade publication, Mr. Goold will provide a copy of that submission to the NRC Region III Director of the Division of Nuclear Materials Safety, 2443 Warrenville Road, Suite 210, Lisle, IL, 60532. Alternatively, the email address in item B.2 above can be used. The NRC, at its sole discretion, may also publish the article in a future Office of Federal and State Materials and Environmental Management Programs (FSME) Newsletter.

6. Mr. Goold recognizes an opportunity to expand upon his previous response to the NRC. Mr. Goold will provide an expanded response which will address in more detail what Mr. Goold has learned from the events of July 27, 2011, including his understanding of why it's important to have two people present during all radiographic operations and why it's important to cooperate with NRC inspectors; what he would do differently in the future; and the consequences of his behavior. Mr. Goold will submit this response to the NRC Region III Director of the Division of Nuclear Materials Safety, 2443 Warrenville Road, Suite 210, Lisle, IL, 60532 within 180 days of the Confirmatory Order. Alternatively, the email address in item B.2 above can be used.

C. Training

Mr. Goold will attend training to satisfy 18.5 hours of instruction in the subjects described in 10 CFR 34.43(g), including the requirements of pertinent federal regulations and case histories of accidents in radiography within 180 days of issuance of the Confirmatory Order.

Upon issuance of this Confirmatory Order, the Order Prohibiting Involvement in NRC-Licensed Activities, IA–12–014, dated June 25, 2012, is rescinded.

The Regional Administrator, NRC Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Goold of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Goold, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

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 email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request 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's 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 the NRC's guidance available on the NRC's 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 email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's 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's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email 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.

If a person (other than Mr. Goold) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 10th day of October 2012.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2012–25538 Filed 10–16–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–30 and 50–185; NRC–2012–0243]

Notice of License Terminations for National Aeronautics and Space Administration; Plum Brook Reactor and Plum Brook Mock-Up Reactor

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is noticing the termination of the National Aeronautic and Space Administration (NASA) Facility License Nos.TR–3 and R–93 for the Plum Brook Reactor Facility (PBRF) near Sandusky, Ohio.

The NRC has terminated the two licenses for the decommissioned NASA PBRF reactors and has released the site for unrestricted use. The licensee requested termination of the licenses in a letter to the NRC dated September 18, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML12268A326). The Plum Brook Reactor was a 60-megawatt materials test reactor, constructed to perform irradiation testing of fueled and unfueled experiments for space program applications. The Plum Brook Mock-up Reactor was a 100-kilowatt swimming-pool type reactor constructed to test ''mock-up'' irradiation components for the Plum Brook Reactor. The reactors operated from 1961 to 1973. In 1973, the PBRF reactors were shutdown.

The licensee submitted a proposed decommissioning plan to the NRC for review and approval in a letter dated December 20, 1999 (ADAMS Accession Numbers ML993630054 and ML993630075). A notice and solicitation of comments under sections 20.1405 and 50.82(b)(5) of Title 10 of the *Code of Federal Regulations* (10 CFR), concerning the proposed action to decommission the NASA PBRF, appeared in the **Federal Register** (65 FR

12040; March 7, 2000). Prior to issuance of the amendments, the Commission published an Environmental Assessment and Finding of No Significant Impact concerning this action in the **Federal Register** (65 FR 16421; March 28, 2000). On March 20, 2002, the NRC approved the decommissioning plan by Amendment No. 11 to License TR–3 and Amendment No. 7 to License No. R–93 (ADAMS Accession Number ML020390069).

In 2007, the licensee submitted a revised Final Status Survey Plan and a request for amendment to the licenses incorporating this plan prior to performing final radiation surveys (ADAMS Accession Numbers ML070450166, ML070450170 and ML070450171). The NRC published a ''Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing'' for the PBRF in the **Federal Register** (72 FR 46521; August 20, 2007). On March 24, 2008, the NRC approved the revised Final Status Survey Plan by License Amendment No. 13 to License TR–3 and Amendment No. 9 to License R–93 (ADAMS Accession Number ML073020311). Following the issuance of the license amendments, the licensee revised the decommissioning plan (ADAMS Accession Number ML082070086) to reflect the approval of the revised Final Status Survey Plan.

The licensee completed final status surveys and documented the survey results in the Final Status Survey Report (FSSR). The FSSR consists of one summary report and eighteen attachments each documenting final status survey results for different areas of the facility. The FSSR documented the level of residual radioactivity remaining at the facility. The licensee stated that radiological remediation of all areas of the PBRF has been completed and the facility meets the criteria for unrestricted release specified in 10 CFR 20.1402. The NRC completed its review of the FSSR, and the NRC staff verified that the criteria in the approved decommissioning plan has been met and determined that the facility and site met the criteria in 10 CFR 20.1402 for unrestricted use. The NRC review was documented in a Technical Evaluation Report and included in its response (ADAMS Accession Number ML12223A244) to the licensee's request for termination of licenses.

Pursuant to 10 CFR 50.82(b)(6), the NRC staff has concluded that the PBRF has been decommissioned in accordance with the approved decommissioning plan and that the terminal radiation survey and associated documentation demonstrate that the facility and site may be released in accordance with the criteria in the NRC-approved decommissioning plan. Further, on the basis of the decommissioning activities carried out by NASA, the NRC's review of the licensee's FSSR, and the results of the NRC inspections conducted at the PBRF and the NRC confirmatory surveys, the NRC has concluded that the decommissioning process is complete and the facility and site may be released for unrestricted use. Therefore, Facility Licenses Nos. TR–3 and R–93 are terminated.

For further details with respect to this action, see licensee's request for license termination dated September 18, 2012. The above referenced documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records for the NASA PBRF dated after January 30, 2000, will be available online in the NRC Library in ADAMS at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should call the NRC's PDR Reference staff at 1–800–397–4209 or 301–415–4737 or email *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of October 2012.

For the Nuclear Regulatory Commission.

Lydia Chang,

Acting Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Programs.

[FR Doc. 2012–25537 Filed 10–16–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2013–1 and CP2013–1; Order No. 1492]

New Postal Product; Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Express Mail & Priority Mail Contract 11 to the competitive product list. This notice addresses procedural steps associated with this filing.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Express Mail & Priority Mail Contract 11 to the competitive product list.[1] The Postal Service asserts that Express Mail & Priority Mail Contract 11 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–1.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–1.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and

[1] Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 11 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 10, 2012 (Request).

Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day following the date that the Commission issues all regulatory approvals. *Id.* at 10. The contract will expire 3 years from the effective date, unless, among other things, either party terminates the agreement with 30 days' written notice to the other party. *Id.* at 11. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–1 and CP2013–1 to consider the Request pertaining to the proposed Express Mail & Priority Mail Contract 11 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 18, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie R. Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–1 and CP2013–1 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 18, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–25432 Filed 10–16–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2013–2 and CP2013–2; Order No. 1493]

New Postal Product; Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a docket to consider the Postal Service's request to add Priority Mail Contract 44 to the competitive product list. This notice provides public notice of the Postal Service's filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 18, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 44 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 44 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–2.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–2.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day following the date that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date, unless, among other things, either party terminates the agreement with 30 days' written notice to the other party. *Id.* The Postal Service represents that the

[1] Request of the United States Postal Service to Add Priority Mail Contract 44 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 10, 2012 (Request).

contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–2 and CP2013–2 to consider the Request pertaining to the proposed Priority Mail Contract 44 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 18, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie R. Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–2 and CP2013–2 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 18, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–25431 Filed 10–16–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68036; File No. SR–NYSEMKT–2012–50]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule Relating to Criteria for Rebates to Order Flow Providers

October 11, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 28, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (the ''Fee Schedule'') to establish criteria for Order Flow Providers (''OFPs'') [4] to earn rebates based on the average daily volume (''ADV'') of Customer [5] electronic equity and exchange-traded fund (''ETF'') contracts executed by an OFP on the Exchange. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish criteria for OFPs to earn rebates based on the ADV of Customer electronic equity and ETF contracts executed by an OFP on the Exchange. The Exchange proposes to implement these changes on October 1, 2012.

The Exchange proposes to establish a rebate for OFPs based on the ADV of Customer electronic equity and ETF contracts executed by an OFP on the Exchange (the ''Tiers'') relative to the overall Total Industry Customer equity and ETF option ADV.[6] In order to be eligible for the rebate, certain criteria must be met. Once all of the criteria have been met, the highest rebate earned will apply to all eligible volume for the particular month for the particular OFP. The criteria will be detailed in new endnote 17 to the Fee Schedule.

The first criterion is that an OFP must execute Customer electronic equity and ETF option volume on the Exchange that is equal to or greater than the percentage of Total Industry Customer equity and ETF option ADV shown in the table below (e.g., 2.7% of Total Industry Customer equity and ETF option ADV for the lowest tier). However, no rebate would be paid on Customer electronic equity and ETF option volume that is less than 120,000 ADV; thus, in a month where the Total Industry Customer equity and ETF option ADV as a whole drops substantially, it is possible that no rebates will be paid.

Volume from executions of Qualified Contingent Cross (''QCC'') Orders,[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An OFP is any ATP Holder that submits, as agent, orders to the Exchange. *See* Rule 900.2NY(57).

[5] The term ''Customer'' means an individual or organization that is not a broker-dealer. *See* Rule 900.2NY(18).

[6] Total Industry Customer equity and ETF option ADV would be that which is reported for the month by OCC in the month in which the rebates may apply. For example, October 2012 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, rebate an OFP may be eligible for based on the Customer electronic equity and ETF option ADV it transacts on the Exchange in October 2012. Total Industry Customer equity and ETF option ADV is comprised of those equity and ETF option contracts that clear in the customer account type at OCC and does not include contracts that clear in either the firm or market maker account type at OCC or contracts overlying a security other than an equity and ETF security.

[7] A QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Commentary .01 to Rule 900.3NY, coupled with a contra-side order to buy

Strategy Executions[8] and orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY (''routed orders'' for purposes of this proposed rebate) would not count toward either the 120,000 Customer electronic equity and ETF option ADV minimum or any of the proposed Customer electronic equity and ETF option ADV Tiers. Volume from executions of Customer Electronic Complex Orders would not count toward the 120,000 Customer electronic equity and ETF option ADV minimum, but would count toward any of the Customer electronic equity and ETF option ADV Tiers. Volume attributable to the execution of QCC Orders, Strategy Executions, Customer Electronic Complex Orders or routed orders would not receive a rebate.[9]

The second criterion that must be met in order for an OFP to qualify for the rebate is that an OFP must execute an ADV of at least 200,000 Customer electronic equity and ETF contracts that specifically result from posting orders to the Exchange's Consolidated Order Book (also known as ''making'' liquidity). In calculating the 200,000 Customer electronic equity and ETF option ADV posting requirement, the Exchange would exclude volume attributable to QCC Orders, Strategy Executions, Electronic Customer Complex Orders and routed orders.

The proposed volume tiers and the corresponding per contract rebate would be as follows:

Customer electronic equity and ETF option ADV tiers	Rebate per contract for all customer electronic equity and ETF option volume over 120,000 ADV (excludes volume from QCC Orders, Strategy Executions, Complex Orders, and routed orders)
at least 2.7% of Total Industry Customer equity and ETF option ADV	$0.07
at least 3.6% of Total Industry Customer equity and ETF option ADV	0.08
at least 4.4% of Total Industry Customer equity and ETF option ADV	0.09

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal to establish a tiered rebate for OFPs that execute the requisite ADV of Customer electronic equity and ETF contracts on the Exchange is reasonable because it is designed to attract additional Customer electronic equity and ETF volume to the Exchange, which would benefit all participants by offering greater price discovery, increased transparency and an increased opportunity to trade on the Exchange. Additionally, the Exchange believes that the proposed rebate is reasonable because it would incentivize OFPs to submit Customer electronic equity and ETF option orders to the Exchange and would result in a rebate that is reasonably related to an exchange's market quality that is associated with higher volumes. The Exchange also believes that proposed thresholds for the tiers are reasonable because they will reward OFPs with a greater rebate when they bring a larger number of equity and ETF orders to the Exchange. Moreover, the Exchange believes that the proposed rebate is equitable and not unfairly discriminatory because it will be available to all OFPs that execute Customer electronic equity and ETF option orders on the Exchange on an equal and non-discriminatory basis. The Exchange also believes that the proposed rebate is not new or novel. Instead, the Exchange understands that at least two other option exchanges currently offer a rebate specifically for Customer volume.[12] Further, the amount of the proposed per contract rebate is within the range of similar rebates on other exchanges.[13]

The Exchange believes that the proposal to exclude volume attributable to QCC Orders, Strategy Executions, Customer Electronic Complex Orders and routed orders from receiving the rebate is reasonable, equitable and not unfairly discriminatory for the following reasons. First, because all OFPs are treated equally in this regard, it is not unfairly discriminatory. Second, it is reasonable and equitable to exclude these volumes from receiving the rebate because QCC Orders and Customer Electronic Complex Orders already are eligible to receive separate rebates.[14] It is reasonable and equitable to exclude Strategy Executions because these transactions are already offered at a discounted rate of $750 per day and further capped at $25,000 per month per initiating firm. Additionally, it is reasonable and equitable to exclude routed orders because the Exchange often incurs a charge for routing Customer orders to away markets. Accordingly, excluding these volumes is both reasonable and equitable.

or sell an equal number of contracts. *See* Rule 900.3NY(y).

[8] Strategy Executions are defined in endnote 8 of the Fee Schedule.

[9] The Exchange notes that both QCC Orders and Customer Electronic Complex Orders are currently eligible to earn rebates and that Strategy Executions are capped on both a per trade and a monthly basis. Additionally, the Exchange notes that in complying with the requirements of the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY, the Exchange incurs routing fees and clearing charges when it routes Customer orders to exchanges that in turn do not charge Customer fees, which the Exchange does not pass along to OFPs.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] For example, the Chicago Board Options Exchange (''CBOE'') has a Volume Incentive Program that pays order flow providers on CBOE a tiered rebate, from $0.00 to $0.20 per contract, based on the number of Customer contracts per day that execute electronically on the exchange. This is described on page 3 of the CBOE fee schedule dated September 18, 2012, *available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*. Additionally, NASDAQ OMX PHLX (''PHLX'') has a Customer Rebate Program that pays tiered rebates that range from $0.00 to $0.12 per contract, as described in the PHLX fee schedule amended September 4, 2012, *available at http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F.*

[13] *See id.*

[14] The Exchange makes a rebate available to Floor Brokers for the execution of QCC Orders as well as a rebate available to OFPs for the execution of Customer Electronic Complex Orders, as described in the Exchange's Fee Schedule, dated September 1, 2012, *available at http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_09_01_12.pdf.*

The Exchange believes that the proposal to only make a rebate available for Customer electronic equity and ETF option ADV in excess of 120,000 contracts is reasonable and equitable because it would reasonably ensure that the Exchange will derive sufficient revenue to continue to fund the rebates, for the benefit of all participants. Further this requirement is not unfairly discriminatory because it applies to all OFPs.

The Exchange believes that the requirement for an OFP to execute an ADV of at least 200,000 Customer electronic equity and ETF contracts as a result of posting orders to the Consolidated Book (i.e., ''making'' liquidity) to be eligible for the rebate is reasonable, equitable and not unfairly discriminatory for the following reasons. This provision is designed to encourage OFPs to send orders to the Exchange, which will contribute to the Exchange's depth of book as well as to the top of book liquidity. Encouraging the posting of orders is both reasonable and equitable because it enhances transparency, price discovery and liquidity for all participants on the Exchange, benefiting all investors. As the requirement will apply to all OFPs equally, it is also not unfairly discriminatory.

For these reasons, the Exchange believes that the entire proposal is reasonable, equitable and not unfairly discriminatory. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [15] of the Act and subparagraph (f)(2) of Rule 19b–4 [16] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–50 and should be submitted on or before November 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–25500 Filed 10–16–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, October 17, 2012 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to propose capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants, and amendments to Rule 15c3–1 under the Exchange Act for broker-dealers.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: October 12, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–25649 Filed 10–15–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68041; File No. SR–BX–2012–065]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add an Additional Execution Algorithm and Priority Overlays To Govern the Priority of Orders

October 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 2012, NASDAQ OMX BX, Inc. (the ''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add an additional execution algorithm and priority overlays to govern the priority of orders. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The BX Options market launched on June 29, 2012 as a fully automated, price/time priority execution system built on the core functionality of the NASDAQ Options Market (''NOM'').[3] BX Options operates as an all-electronic system (''System'' or ''Trading System'') with no physical trading floor and provides for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders. The BX Options market closely resembles NOM, including, most prominently, by offering true price/time priority across all orders and participants rather than differentiating between participant/trading interest. Like on NOM, all trading interest entered into the System is automatically executable.

In its proposed rule change to create the BX Options market, BX stated that, initially, BX Options would have the same market structure and rules as NOM, focusing on a price/time priority market.[4]

BX further stated that, over time, as the BX Options market secured more participants, it would introduce additional, innovative technology.[5] At this time, BX proposes its first enhancement to BX Options by offering a different priority rule. Currently, Chapter VI, Section 10, Book Processing, provides that the System, like NOM, will have a single execution algorithm based on price/time priority. The System and rules provide for the ranking, display, and execution of all orders in price/time priority without regard to the status of the entity entering an order. For each order, among equally priced or better-priced trading interest, the System currently executes against available contra-side displayed contract amounts in full, in price/time priority.

At this time, the Exchange proposes to amend Chapter VI, Section 10, to provide for a Size Pro-Rata execution algorithm. In order to make clear that only one of the two execution algorithms is applicable to a particular option, BX proposes to add introductory language to Section 10(1) to state that the Exchange will determine to apply, for each option, one of the execution algorithms described in subparagraphs (A)[6] or (B). The Exchange will issue an Options Alert specifying which execution algorithm will govern which options any time a change is made.

Further, BX proposes to adopt new subparagraph (B) to provide that when the Size Pro-Rata execution algorithm is in effect the System shall execute trading interest in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If this is not a whole number, it will be rounded down to the nearest whole number. If there are residual contracts remaining after rounding, such contracts will be distributed one contract at a time to the remaining Participants in time priority. The Size Pro-Rata execution algorithm will, initially, always operate with the priority overlays, as described further below. The Size Pro-Rata execution algorithm is similar to the Pro-Rata Priority provision in CBOE Rule 6.45A(a)(ii), which provides that resting quotes and orders in the book are prioritized according to price. CBOE Rule 6.45A(a)(ii) further provides that if there are two or more quotes or orders at the best price then trades are allocated proportionally according to size (in a pro-rata fashion). The executable quantity is allocated to the nearest whole number, with fractions ½ or greater rounded up and fractions less than ½ rounded down. If there are two market participants that both are entitled to an additional ½ contract and there is only one contract remaining to be distributed, the additional contract will be distributed to the market participant whose quote or order has time priority. This is substantially similar to the proposal at hand.[7] However, CBOE provides for rounding to the nearest whole number, while the proposal at hand provides for the BX Options market to round down in each case to the nearest whole number. BX does not believe this is a significant difference between the two methods. The following examples demonstrate how rounding differs between CBOE's rule and BX's proposal:

Example 1[8]—CBOE rounding approach

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BX Options Rules, Chapter VI, Section 1(e)(11). Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (Approving the establishment of the BX Options market).

[4] *See id.* at 39278.

[5] Securities Exchange Act Release No. 66983 (May 14, 2012), 77 FR 29730 (May 18, 2012) (Notice of filing of SR–BX–2012–030).

[6] BX is also proposing to amend subparagraph (A) to provide that, respecting the price/time execution algorithm, within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority. This is intended to be clearer and match the new language in subparagraph (B).

[7] Meaning, BX's general pro-rata priority rule is substantially similar to CBOE's operating without a customer or market maker priority overlay, which are discussed below.

[8] In each example, the orders and quotes are listed in the order in which they were received. Example 1 is intended to show how rounding works

Continued

Order 1: Buy 10 contracts for 1.84, Non-Market Maker broker-dealer
Order 2: Buy 10 contracts for 1.84, Public Customer
Quote: 1.84 (70) × 1.86 (10) MM1
Order 3: Buy 10 contracts for 1.84, Market Maker
Market: 1.84 (100 contracts total) × 1.86 (10 contracts)
Sell order received: Sell 25 contracts at 1.84

Execution:
Order 1 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds up to 3 contracts.
Order 2 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds up to 3 contracts.
MM1's quote represents 70 of 100 (70%) total contracts at 1.84.
Again, 70% of 25 contracts execute = 17.5, rounds up to 18 contracts but to avoid over-allocation, MM1 receives 17.
Order 3 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds up to 3 contracts but to avoid over-allocation, Order 3 receives 2.

Example 2—BX Options proposed rounding approach [9]
Order 1: Buy 10 contracts for 1.84, Non-Market Maker broker-dealer
Order 2: Buy 10 contracts for 1.84, Public Customer
Quote: 1.84 (70) × 1.86 (10) MM1
Order 3: Buy 10 contracts for 1.84, Market Maker
Market: 1.84 (100 contracts total) × 1.86 (10 contracts)
Sell order received: Sell 25 contracts at 1.84

Execution:
Order 1 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds down to 2 contracts.
Order 2 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds down to 2 contracts.
MM1's quote represents 70 of 100 (70%) total contracts at 1.84.
Again, 70% of 25 contracts execute = 17.5, rounds down to 17 contracts.
Order 3 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds down to 2 contracts.
Total executed: 23. There are 2 residual contracts remaining from the 25 contract sell order. The remaining 2 contracts are allocated one at a time based on time as follows:
Order 1 receives 1 additional residual contract.
Order 2 receives 1 additional residual contract.
The 25 contract sell order is now completely executed.

BX believes that this rounding method is appropriate and fair, and will be clear to Participants. In particular, BX has chosen to round down because it is a more efficient way to calculate the distribution of non-whole number allocations. Rather than having to break a tie by time whenever there are two or more Participants entitled to ½ a contract, BX will simply round down in all cases and distribute any residual one contract at a time to each Participant based on time priority as illustrated in Example 2 above.

In addition, BX proposes to adopt two priority overlays. The new subparagraph (C), Priority Overlays Applicable to Size Pro-Rata Execution Algorithm, will provide that the Exchange will apply these priority overlays. BX plans to initially implement the Size Pro-Rata execution algorithm with both the Public Customer and Market Maker priority overlays.

The first priority overlay, Public Customer Priority, is proposed to be subparagraph (1)(C)(i). Under this priority overlay, interest at the highest bid and lowest offer shall have priority except that Public Customer orders shall have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. For purposes of this Rule, a Public Customer order does not include a Professional Order. This is substantially similar to CBOE Rule 6.45A(a)(ii)(1) and ISE Rule 713(d).

The second proposed priority overlay is contained in subparagraph (1)(C)(ii), Market Maker Priority. Under this priority overlay, the highest bid and lowest offer shall have priority except that BX Options Market Maker orders, after all Public Customer orders have been fully executed in time priority, shall have priority over all other Participant orders at the same price. The Public Customer priority is always a part of the Market Maker Priority overlay and both overlays will always apply to the Size Pro-Rata execution algorithm initially.[10] If there are two or more BX Options Market Maker quotes and orders for the same options series at the same price, those orders shall be executed based on the Size Pro-Rata execution algorithm.[11] If there are contracts remaining after all Market Maker interest has been fully executed (meaning, Non-Public Customer and Non-Market Maker), such contracts shall be executed based on the Size Pro-Rata execution algorithm.[12]

The following is an example of the Public Customer and Market Maker priority overlays applied to the proposed Size Pro-Rata execution algorithm:

Example 3:
Order 1: Buy 10 contracts for 1.84, Non-MM broker-dealer
Order 2: Buy 10 contracts for 1.84, Public Customer
Quote MM1: 1.84 (10) × 1.86 (10)
Order 3: Buy MM 1.84 (10)
Sell order received: Sell 21 contracts at 1.84

Execution:
Order 2 allocated 10 contracts because of Public Customer priority
Quote MM1 represents 10 of 20 (50%) total MM contracts at 1.84. 50% of 11 contracts to execute = 5.5, rounds down to 5 contracts.
Order 3 represents 10 of 20 (50%) total MM contracts at 1.84. 50% of 11 contracts to execute = 5.5, rounds down to 5 contracts.
Remaining 1 contract is allocated to MM1 based on time among MMs.
Order 1 is not executed because Market Makers have priority over non-Market Maker broker-dealers. Order 1 would only be executed if all interest at the Public Customer priority level and the Market Maker level was first completely executed.

In summary, this proposed rule change will allow for a different execution algorithm for BX Options. To be clear, two different execution algorithms will not operate in the same option. In addition, when the Size Pro-Rata execution algorithm is selected by BX, the proposed new priority overlays

pursuant to CBOE's rules, but does not include the operation of the priority overlays, which will, as described below, initially always operate with the Size Pro-Rata execution algorithm.

[9] CBOE and BX methodology results in the same allocation in this example, but there could be instances where the result differs, depending on the number of contracts involved.

[10] BX may later file a proposed rule change to make available the Size Pro-Rata execution algorithm without the Public Customer or Market Maker priority overlays, or with just the Public Customer priority overlay.

[11] This is similar to Phlx Rule 1014(g)(vii)(B)(1)(b).

[12] This is similar to Phlx Rule 1014(g)(vii)(B)(1)(d).

will be applied first as part of the execution algorithm used to allocate the order. These additional priority overlays are Public Customer priority and Market Maker priority, which will only apply to the Size Pro-Rata execution algorithm. BX notes that the execution algorithm will be selected and communicated by BX to its Participants. The Public Customer and Market Maker priority overlays will, initially, always operate with the Size Pro-Rata execution algorithm.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act [14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, because it will provide additional execution algorithms and priority overlays on BX Options, which operate on other exchanges, as explained in detail below. These additional execution algorithms and priority overlays provide Participants with additional choices among the many competing exchanges with regard to their execution needs and strategies. The Exchange believes that adding this flexibility to its rules will allow for greater customization, resulting in enhanced service to its customers and users, which would continue to be a purely objective method for allocating option trades. Furthermore, BX Options operates in an intensely competitive environment and seeks to offer the same services that its competitors offer and in which its customers would find value.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–065. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–065 and should be submitted on or before November 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–25541 Filed 10–16–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68035; File No. SR–ICC–2012–18]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Add Rules Related to the Clearing of iTraxx Europe Index CDS and European Corporate Single-Name CDS

October 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 28, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to adopt new rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Chapter 26 of its rules to add Section 26F to provide for the clearance of the iTraxx Europe CDS (''iTraxx Contracts''), which reference the iTraxx Europe corporate index, and new Section 26G to provide for the clearance of standard single-name CDS Contracts referencing European corporate reference entities (''European SN Contracts''). ICC will also update Schedule 502 of its Rules (Cleared Products List) to incorporate the additional cleared products.

Upon Commission approval, ICC will list the following European Indices: Markit iTraxx Europe Main Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx Europe Main Series 18 with a 10-year maturity, maturing on December 20, 2022; Markit iTraxx Europe Main Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx Europe Main Series 17 with a 10-year maturity, maturing on June 20, 2022; Markit iTraxx Europe Main Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx Europe Main Series 16 with a 10-year maturity, maturing on December 20, 2021; Markit iTraxx Europe Main Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx Europe Main Series 15 with a 10-year maturity, maturing on June 20, 2021; Markit iTraxx Europe Main Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx Europe Main Series 14 with a 10-year maturity, maturing on December 20, 2020; Markit iTraxx Europe Main Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx Europe Main Series 13 with a 10-year maturity, maturing on June, 20, 2020; Markit iTraxx Europe Main Series 12 with a 5-year maturity, maturing on December 20, 2014; Markit iTraxx Europe Main Series 12 with a 10-year maturity, maturing on December 20, 2019; Markit iTraxx Europe Main Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx Europe Main Series 11 with a 10-year maturity, maturing on June 20, 2019; Markit iTraxx Europe Main Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx Europe Main Series 10 with a 10-year maturity, maturing on December 20, 2018; Markit iTraxx Europe Main Series 9 with a 5-year maturity, maturing on June 20, 2013; Markit iTraxx Europe Main Series 9 with a 10-year maturity, maturing on June 20, 2018; Markit iTraxx Europe Main Series 8 with a 5-year maturity, maturing on December 20, 2012; Markit iTraxx Europe Main Series 8 with a 10-year maturity, maturing on December 20, 2017; Markit iTraxx Europe Main Series 7 with a 10-year maturity, maturing June 20, 2017; Markit iTraxx Crossover Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx Crossover Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx Crossover Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx Crossover Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx Crossover Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx Crossover Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx Crossover Series 12 with a 5-year maturity, maturing on December 20, 2014; Markit iTraxx Crossover Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx Crossover Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx Crossover Series 9 with a 5-year maturity, maturing on June 20, 2013; Markit iTraxx HiVol Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx HiVol Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx HiVol Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx HiVol Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx HiVol Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx HiVol Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx HiVol Series 12 with a 5-year maturity, maturing on December 20, 2014; Markit iTraxx HiVol Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx HiVol Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx HiVol Series 9 with a 5-year maturity, maturing on June 20, 2013; and Markit iTraxx HiVol Series 8 with a 5-year maturity, maturing on December 20, 2012.

Additionally, upon Commission approval, ICC plans to provide for the clearance of the following European SN Contracts: Centrica Plc; E.ON AG; ENEL S.P.A.; EDISON S.P.A.; EDP—Energias de Portugal; S.A.; ELECTRICITE DE FRANCE; EnBW Energie Baden-Wuerttemberg AG; Fortum Oyj; Adecco S.A.; Aktiebolaget Volvo; ALSTOM; BRITISH TELECOMMUNICATIONS public limited company; COMPAGNIE DE SAINT–GOBAIN; Deutsche Telekom AG; FRANCE TELECOM; GAS NATURAL SDG, S.A. GDF SUEZ; HELLENIC TELECOMMUNICATIONS ORGANISATION SOCIETE ANONYME; IBERDROLA, S.A.; Koninklijke KPN N.V. NATIONAL GRID PLC; Portugal Telecom International Finance B.V.; RWE Aktiengesellschaft; TELECOM ITALIA SPA; TELEFONICA, S.A.; Telekom Austria Aktiengesellschaft; TELENOR ASA; TeliaSonera Aktiebolag; UNITED UTILITIES PLC; Vattenfall Aktiebolag; VEOLIA ENVIRONNEMENT VIVENDI; VODAFONE GROUP PUBLIC LIMITED COMPANY; Deutsche Post AG; European Aeronautic Defence and Space Company EADS N.V.; FINMECCANICA S.P.A.; Holcim Ltd; ROLLS–ROYCE plc; Siemens Aktiengesellschaft; PostNL N.V.; REPSOL, S.A.; Bayerische Motoren Werke Aktiengesellschaft; BRITISH AMERICAN TOBACCO p.l.c.; Daimler AG; DANONE; DIAGEO PLC; Koninklijke Philips Electronics N.V.; LVMH MOET HENNESSY LOUIS VUITTON; Nestle S.A.; Svenska Cellulosa Aktiebolaget SCA; Unilever N.V.; VOLKSWAGEN AKTIENGESELLSCHAFT; ACCOR; Bertelsmann AG; CARREFOUR; CASINO GUICHARD–PERRACHON; COMPASS GROUP PLC; EXPERIAN FINANCE PLC; GROUPE AUCHAN; J SAINSBURY plc; Koninklijke Ahold N.V.; MARKS AND SPENCER p.l.c.; METRO AG; NEXT PLC; PEARSON plc; PPR; PUBLICIS GROUPE SA; REED ELSEVIER PLC; SAFEWAY LIMITED; SODEXO; TESCO PLC; Wolters Kluwer N.V.; WPP 2005 LIMITED; AKZO Nobel N.V.; Anglo American plc; ArcelorMittal; BASF SE; Glencore International AG; Henkel AG & Co. KGaA; Koninklijke DSM N.V.; LANXESS Aktiengesellschaft; Linde Aktiengesellschaft; Solvay; XSTRATA PLC; STMicroelectronics N.V.; Bayer Aktiengesellschaft; SANOFI; Aegon N.V.; Allianz SE; ASSICURAZIONI GENERALI—SOCIETA PER AZIONI; AVIVA PLC; AXA; BANCA MONTE DEI PASCHI DI SIENA S.P.A.; BANCO; BILBAO VIZCAYA ARGENTARIA, SOCIEDAD ANONIMA; Banco Espirito Santo, S.A.; BANCO SANTANDER, S.A.; Bank of Scotland plc; INTESA SANPAOLO SPA; JTI (UK) FINANCE PLC; Swiss Reinsurance Company Ltd; Zurich Insurance Company Ltd; Compagnie Financiere Michelin; L'AIR LIQUIDE SOCIETE ANONYME POUR L'ETUDE ET L'EXPLOITATION DES

PROCEDES GEORGES CLAUDE; BAE SYSTEMS PLC; BOUYGUES; BP P.L.C.; IMPERIAL TOBACCO GROUP PLC; KINGFISHER PLC; Suedzucker Aktiengesellschaft Mannheim/Ochsenfurt; Swedish Match AB; TECHNIP; IMPERIAL CHEMICAL INDUSTRIES LIMITED; ALTADIS SA; BRITISH SKY BROADCASTING GROUP PLC; Aktiebolaget Electrolux; THALES; Metso Oyj; Muenchener Rueckversicherungs-Gesellschaft Aktiengesellschaft in Muenchen; Syngenta AG; TATE & LYLE PUBLIC LIMITED COMPANY; and TOTAL SA.

In addition, ICC proposes to amend Section 26E of its rules to include certain additional provisions relevant to the treatment of restructuring credit events under the iTraxx Contracts and European SN Contracts.

As discussed in more detail in Item II.A. below, new Section 26F of the ICC rules provides for the definitions and certain specific contract terms for cleared iTraxx Contracts. New Section 26G provides for the definitions and certain specific contract terms for cleared European SN Contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC has identified iTraxx Contracts and European SN Contracts as products that have become increasingly important for market participants to manage risk and express views with respect to European corporate credit risk. ICC's clearance of these Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions. In addition, ICC notes that the Commodity Futures Trading Commission has proposed that certain iTraxx Europe CDS contracts would be subject to mandatory clearing under Section 2(h) of the Commodity Exchange Act.

iTraxx Contracts have similar terms to the CDX North American Index CDS contracts (''CDX.NA Contracts'') and CDX Emerging Market Index (''CDX.EM Contracts'') currently cleared by ICC and governed by Sections 26A and 26C of the ICC rules. Accordingly, the proposed rules found in Section 26F largely mirror the ICC rules for those Contracts, with certain modifications that reflect the underlying reference entities (European corporate reference entities instead of North American corporate or Latin American sovereign entities) and differences in terms and market conventions. The iTraxx Contracts reference the iTraxx Europe index, the current series of which consists of 125 European corporate reference entities. iTraxx Contracts, consistent with market convention and widely used standard terms documentation, can be triggered by credit events for failure to pay, bankruptcy and restructuring. iTraxx Contracts will be denominated in Euro.

Rule 26F–102 (Definitions) sets forth the definitions used for the iTraxx Contract Rules. An ''Eligible iTraxx Europe Untranched Index'' is defined as ''each particular series and version of an iTraxx Europe index or sub-index, as published by the iTraxx Untranched Publisher, included from time to time in the List of Eligible iTraxx Untranched Indexes,'' which is a list maintained, updated and published from time to time by the ICC Board of Managers or its designee, containing certain specified information with respect to each index. ''iTraxx Europe Untranched Terms Supplement'' refers to the market standard form of documentation used for credit default swaps on the iTraxx Europe index, which is incorporated by reference into the contract specifications in Chapter 26F. The remaining definitions are substantially the same as the definitions found in ICC Section 26A and Section 26C, other than certain conforming changes.

Rules 26F–309 (Acceptance of iTraxx Europe Untranched Contract), 26F–315 (Terms of the Cleared iTraxx Europe Untranched Contract), and 26F–316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranched Standard Terms Supplement) reflect or incorporate the basic contract specifications for iTraxx Contracts and are substantially the same as under ICC Section 26A for CDX.NA Contracts and ICC Section 26C for CDX.EM Contracts. In addition to various non-substantive conforming changes, proposed Rule 26F–317 (Terms of iTraxx Europe Untranched Contracts) differs from the corresponding Rule 26A–317 to reflect the fact that restructuring is a credit event for the iTraxx Contract.

European SN Contracts have similar terms to the North American Corporate Single Name CDS Contracts (''North American SN Contracts'') currently cleared by ICC and governed by Section 26B of the Rules and the Latin American sovereign CDS contracts currently cleared by ICC and governed by Section 26D of the Rules. Accordingly, the proposed rules found in Section 26G largely mirror the ICC rules for North American SN Contracts in Section 26B, with certain modifications that reflect differences in terms and market conventions between European SN Contracts and North American SN Contracts. European SN Contracts will be denominated in Euro.

Rule 26G–102 (Definitions) sets forth the definitions used for the European SN Contracts. An ''Eligible SNEC Reference Entity'' is defined as ''each particular Reference Entity included from time to time in the List of Eligible Reference Entities,'' which is a list maintained, updated and published from time to time by the ICC Board of Managers or its designee, containing certain specified information with respect to each reference entity. The Eligible SNEC Reference Entities will initially consist of 121 European corporate reference entities specified in Schedule 502 to the ICC Rules. Certain substantive changes have also been made to the definition of ''List of Eligible SNEC Reference Entities'', due to the fact that certain terms and elections for North American SN Contracts are not applicable to European SN Contracts. These include (i) the need for an election as to whether ''Restructuring'' is an eligible ''Credit Event'' (it is by contract term and market convention applicable to all European SN Contracts, whereas it is generally not applicable to North American SN Contracts) and (ii) the applicability of certain ISDA supplements that may apply to North American SN Contracts but do not apply to European SN Contracts, including the 2005 Monoline Supplement, the ISDA Additional Provisions for a Secured Deliverable Obligation Characteristic and the ISDA Additional Provisions for Reference Entities with Delivery Restrictions. The remaining definitions are substantially the same as the definitions found in ICC Section 26B, other than certain conforming changes.

Rules 26G–203 (Restriction on Activity), 26G–206 (Notices Required of Participants with respect to SNEC Contracts), 26G–303 (SNEC Contract Adjustments), 26G–309 (Acceptance of SNEC Contracts by ICE Clear Credit),

26G–315 (Terms of the Cleared SNEC Contract), 26G–316 (Relevant Physical Settlement Matrix Updates), 26G–502 (Specified Actions), and 26G–616 (Contract Modification) reflect or incorporate the basic contract specifications for European SN Contracts and are substantially the same as under ICC Section 26B for North American SN Contracts, except as follows. In addition to various non-substantive conforming changes, the proposed rules differ from the existing North American SN Contracts in that the contract terms in Rule 26G–315 incorporate the relevant published ISDA physical settlement matrix terms for Standard European Corporate transactions, rather than Standard North American Corporate transactions, and, as noted in the preceding paragraph, certain elections and supplements used for North American SN Contracts are not applicable to European SN Contracts. In addition, the contracts reflect the fact that under the ISDA physical settlement matrix terms, the restructuring credit event and the related additional terms for ''Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation'' under the ISDA Credit Derivatives Definitions (commonly referred to as ''Mod Mod R'' terms) apply to European SN Contracts.

In addition, ICC proposes to make conforming changes in Section 26E of the Rules (the CDS Restructuring Rules), principally to address the particular restructuring terms that apply to iTraxx Contracts and European SN Contracts. Specifically, ICC proposes to modify the notice delivery procedures in Rule 26E–104 to include ''notices to exercise movement option'' under the Mod Mod R terms. In addition, the definition of ''Triggered Restructuring CDS Contract'' has been modified to reflect that under Mod Mod R terms a CDS contract may be triggered in part following a restructuring credit event.

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F), because ICC believes that the clearance of iTraxx and European SN Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2012–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2012–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_092812.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2012–18 and should be submitted on or before November 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–25499 Filed 10–16–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68037; File No. SR–FINRA–2012–045]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend NASD Rule 2711 and Incorporated NYSE Rule 472 To Conform With the Requirements of the Jumpstart Our Business Startups Act and Related Changes

October 11, 2012.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have substantially been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend NASD Rule 2711 (Research Analysts and Research Reports) to conform with the requirements of the Jumpstart Our Business Startups Act (''JOBS Act'')[3] and make certain additional changes to quiet period restrictions consistent with the policies underlying the JOBS Act. The proposed rule change also makes conforming amendments to Incorporated NYSE Rule 472 (Communications With The Public).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The JOBS Act was signed into law on April 5, 2012. Among other things, the JOBS Act is intended to help facilitate capital formation for ''emerging growth companies'' (''EGCs'') by improving the information flow about EGCs to investors. To that end, Section 105(b) of the JOBS Act amended Section 15D of the Act to prohibit the Commission or any national securities association from adopting or maintaining any rule or regulation in connection with an initial public offering (''IPO'') of an EGC that:

- Restricts, based on functional role, which associated persons of a broker, dealer, or member of a national securities association, may arrange for communications between an analyst and a potential investor; or
- restricts a securities analyst from participating in any communication with the management of an EGC that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.

Section 105(d) further prohibits the Commission or any national securities association from adopting or maintaining any rule or regulation that prohibits a broker or dealer from publishing or distributing any research report or making a public appearance, with respect to the securities of an EGC either:

- within any prescribed period of time following the IPO date of the EGC; or
- within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the EGC or its shareholders that restricts or prohibits the sale of securities held by the EGC or its shareholders after the IPO date.

These provisions became effective upon signature of the President on April 5, 2012. On August 22, 2012, the SEC's Division of Trading and Markets provided guidance on these provisions in the form of Frequently Asked Questions (''FAQs'').[4] FINRA is amending the applicable provisions of NASD Rule 2711 to conform with the JOBS Act and SEC staff guidance with regard to the applicable JOBS Act provisions.[5]

Arranging and Participating in Communications

NASD Rule 2711(c)(4)[6] prohibits a research analyst from participating ''in efforts to solicit investment banking business,'' including any ''pitches'' for investment banking business or other communications with companies for the purpose of soliciting investment banking business. The FAQs interpret the JOBS Act to now allow, in connection with an IPO of an EGC, research analysts to attend meetings with issuer management that are also attended by investment banking personnel, including pitch meetings, but not ''engage in otherwise prohibited conduct in such meetings,'' including ''efforts to solicit investment banking business.'' The FAQs further explain that a research analyst that attends a pitch meeting ''could, for example, introduce themselves, outline their research program and the types of factors that the analyst would consider in his or her analysis of a company, and ask follow-up questions to better understand a factual statement made by the [EGC]'s management.'' Accordingly, the proposed rule change creates an exception to NASD Rule 2711(c)(4) to reflect this guidance regarding the application of the JOBS Act.[7]

The FAQs state that under Section 105(b) of the JOBS Act, an associated person of a broker-dealer, including investment banking personnel, may arrange communications between research analysts and investors in connection with an IPO of an EGC. As an example, the FAQs state that an investment banker could forward a list of clients to a research analyst that the analyst could, ''at his or her own discretion and with appropriate controls, contact.'' The FAQs acknowledge that FINRA does not have a rule that directly prohibits this activity and further states that such activity, without more, would not constitute conduct by investment banking personnel to directly or indirectly direct a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, in violation of NASD Rule 2711(c)(6).[8] Accordingly, this JOBS Act provision requires no conforming rule change.

Quiet Periods

Section 105(d) of the JOBS Act expressly permits publication of research and public appearances with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pub. L. No. 112–106, 126 Stat. 306.

[4] These FAQs are available at *http://www.sec.gov/divisions/marketreg/tmjobsact-researchanalystsfaq.htm.*

[5] FINRA notes that the SEC staff guidance interprets the JOBS Act provisions as applicable to Incorporated NYSE Rule 472 to the same extent as NASD Rule 2711. As such, the proposed rule change makes corresponding amendments to Incorporated NYSE Rule 472.

[6] *See also* Incorporated NYSE Rule 472(b)(5).

[7] A corresponding exception is created for Incorporated NYSE Rule 472(b)(5).

[8] *See also* Incorporated NYSE Rule 427(b)(6)(ii). In 2003 and 2004, the Commission, self-regulatory organizations, and other regulators instituted settled enforcement actions against 12 broker-dealers to address conflicts of interest between the firms' research and investment banking functions (''Global Settlement''). As the FAQs point out, firms subject to the Global Settlement should also be mindful of the requirements of that court order as they remain in place.

respect to the securities of an EGC any time after the IPO of an EGC or prior to the expiration of any lock up agreement. While the JOBS Act refers only to the ''expiration'' of a lock-up agreement, the FAQs note a SEC staff belief that Congress intended for the JOBS Act provisions to apply equally to the period before a ''waiver'' or ''termination'' of a lock-up agreement. Thus, in accordance with SEC staff guidance on this JOBS Act provision, the proposed rule change amends NASD Rule 2711 to eliminate the following quiet periods with respect to an IPO of an EGC:

- NASD Rule 2711(f)(1)(A),[9] which imposes a 40-day quiet period after an IPO on a member that acts as a manager or co-manager of such IPO;
- NASD Rule 2711(f)(2),[10] which imposes a 25-day quiet period after an IPO on a member that participates as an underwriter or dealer (other than manager or co-manager) of such an IPO; and
- NASD Rule 2711(f)(4) [11] with respect to the 15-day quiet period applicable to IPO managers and co-managers prior to the expiration, waiver, or termination of a lock-up agreement or any other agreement that such member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of an IPO.

The FAQs note that the JOBS Act makes no reference to quiet periods after a secondary offering or during a period of time after expiration, termination, or waiver of a lock-up agreement. Accordingly, the FAQs note that NASD Rule 2711(f)(1)(B),[12] which imposes a 10-day quiet period on managers and co-managers following a secondary offering and the remaining portion of NASD Rule 2711(f)(4) [13] relating to quiet periods *after* the expiration, termination or waiver of a lock up agreement, remain fully in effect. Nonetheless, the FAQs express the SEC staff's belief that the policies underlying the JOBS Act are equally applicable to quiet periods during these other times. FINRA agrees that elimination of those quiet periods would advance the policy objectives of the JOBS Act and therefore has proposed to amend NASD Rule 2711 accordingly.[14]

FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act [15] for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** so that FINRA can implement changes to conform with the JOBS Act, which has been effective since April 5, 2012. The proposed changes to NASD Rules 2711(c)(4), (f)(1)(A), (f)(2), and (f)(4) (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472 would be effective as of April 5, 2012. FINRA requests that the proposed changes to NASD Rules 2711(f)(1)(B) and (f)(4) (with respect to the 15-day quiet period after the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472, which further the policies underlying the statutory mandates, become effective upon Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the changes to NASD Rules 2711(c)(4),[17] (f)(1)(A),[18] (f)(2),[19] and (f)(4) [20] (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472 conform those rules to statutory mandates. FINRA also believes that the proposed additional changes to NASD Rules 2711(f)(1)(B) [21] and (f)(4) [22] further the policies underlying the statutory mandates by improving information flow to investors with respect to EGCs without sacrificing the reliability of research reports, as the other objectivity safeguards in NASD Rule 2711 [23] and SEC Regulation AC [24] are effective and will continue to apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended by the JOBS Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2012–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–045. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and

[9] *See also* Incorporated NYSE Rule 472(f)(1).
[10] *See also* Incorporated NYSE Rule 472(f)(3).
[11] *See also* Incorporated NYSE Rule 472(f)(4).
[12] *See also* Incorporated NYSE Rule 472(f)(2).
[13] *See also* Incorporated NYSE Rule 472(f)(4).
[14] A corresponding change is made to Incorporated NYSE Rule 472(f).

[15] 15 U.S.C. 78s(b)(2).
[16] 15 U.S.C. 78*o*–3(b)(6).
[17] *See also* Incorporated NYSE Rule 472(b)(5).
[18] *See also* Incorporated NYSE Rule 472(f)(1).
[19] *See also* Incorporated NYSE Rule 472(f)(3).
[20] *See also* Incorporated NYSE Rule 472(f)(4).
[21] *See also* Incorporated NYSE Rule 472(f)(2).
[22] *See also* Incorporated NYSE Rule 472(f)(4).
[23] *See also* Incorporated NYSE Rule 472.
[24] 17 CFR 242.500–05.

copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–045 and should be submitted on or before November 7, 2012.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[25] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[26] The proposal primarily reflects the changes imposed on FINRA's rules by Sections 105(b) and 105(d) of the JOBS Act and thus is primarily updating the language of NASD Rule 2711 and Incorporated NYSE Rule 472 to reflect that reality. The one change not expressly mandated by the JOBS Act, removing the quiet periods regarding the secondary offering of the securities of EGCs and after the expiration, termination, or waiver of a lock-up regarding such securities, is consistent with the purpose of the JOBS Act as part of an effort to improve communications with investors regarding EGCs. Furthermore, other safeguards designed to protect the objectivity of research and provide investors with more useful and reliable information remain in effect, including Regulation AC and the parts of NASD Rule 2711 and Incorporated NYSE Rule 472 not affected by these changes.

In its filing, FINRA has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. FINRA cites as the reason for this request is because the changes conforming to the JOBS Act have been effective since April 5, 2012 and the additional proposed changes further the policies underlying the applicable JOBS Act provision.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[27] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because the changes required by the JOBS Act have been in effect since April 5, 2012 and the additional proposed changes further the policies underlying the applicable JOBS Act provision.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2012–045) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–25501 Filed 10–16–12; 8:45 am]

BILLING CODE 8011–01–P

[25] In approving this rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78*o*–3(b)(6).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68034; File No. SR–ISE–2012–85]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees for Certain Complex Orders Executed on the Exchange

October 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend transaction fees for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'')[4] and in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5] The purpose of this proposed rule change is to amend maker/taker fees and rebates for complex orders in the Select Symbols, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols.

For complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a taker fee of: (i) $0.37 per contract for Market Maker,[6] Firm

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72); 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR–ISE–2012–17); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38); and 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR–ISE–2012–71).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); 66962 (May 10, 2012), 77 FR 28917 (May 16, 2012) (SR–ISE–2012–35); 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR–ISE- 2012–63) and 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR–ISE–2012–71).

[6] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

Proprietary/Broker-Dealer and Professional Customer [7] orders; and (ii) $0.39 per contract for Non-ISE Market Maker [8] orders. Priority Customer [9] orders are not charged a taker fee for complex orders in the Select Symbols (excluding SPY). The Exchange now proposes to increase the complex order taker fee in the Select Symbols (excluding SPY) to $0.39 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders. The Exchange is not proposing any change to the complex order taker fee in the Select Symbols (excluding SPY) for Market Maker, Non-ISE Market Maker and Priority Customer orders.

For complex orders in SPY, the Exchange currently charges a taker fee of: (i) $0.38 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, and (ii) $0.40 per contract for Non-ISE Market Maker Orders. Priority Customer orders are not charged a taker fee for complex orders in SPY. The Exchange now proposes to increase the complex order taker fee in SPY to $0.40 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders. The Exchange is not proposing any change to the complex order taker fee in SPY for Market Maker, Non-ISE Market Maker and Priority Customer orders.

For complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) $0.37 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (ii) $0.39 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in the Non-Select Penny Pilot Symbols. The Exchange now proposes to increase the complex order taker fee in the Non-Select Penny Pilot Symbols to $0.39 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders. The Exchange is not proposing any change to the complex order taker fee in the Non-Select Penny Pilot Symbols for Market Maker, Non-ISE Market Maker and Priority Customer orders.

For complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) $0.80 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, and (ii) $0.83 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in the Non-Penny Pilot Symbols. The Exchange now proposes to increase the complex order taker fee in the Non-Penny Pilot Symbols to $0.83 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders. The Exchange is not proposing any change to the complex order taker fee in the Non-Penny Pilot Symbols for Market Maker, Non-ISE Market Maker and Priority Customer orders.

For Responses to Crossing Orders [10] in the Non-Penny Pilot Symbols, ISE currently charges $0.73 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders. For Non-ISE Market Maker orders, this fee is currently $0.78 per contract. The Exchange now proposes to increase the fee for Responses to Crossing Orders for Non-Penny Pilot Symbols to $0.80 per contract for Market Maker Orders, and to $0.83 per contract to Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers remove liquidity in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols from the complex order book. Market Makers that remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) $0.35 per contract in the Select Symbols; (ii) $0.36 per contract in SPY; (iii) $0.35 per contract in the Non-Select Penny Pilot Symbols; and (iv) $0.78 per contract in the Non-Penny Pilot Symbols Select Symbols.

Finally, the Exchange currently allows Market Makers to enter quotations for complex order strategies in the complex order book.[11] Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange has adopted maker fees that apply to transactions in the complex order book when they interact with Priority Customer orders in options overlying AA, ABX, EFA, GLD, MSFT, MU, NVDA, VXX, VZ, WFC, XLB and XOP (''Complex Quoting Symbols''). Specifically, the Exchange currently charges a maker fee of $0.37 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders when these orders interact with Priority Customer orders in the Complex Quoting Symbols. Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book are not charged a fee and do not receive a rebate when interacting with other Priority Customer orders.

The Exchange now proposes to increase the maker fee for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders in the Complex Quoting Symbols from $0.37 per contract to $0.39 per contract when these orders interact with Priority Customer orders in the complex order book. The Exchange does not propose any change to fees for Market Maker and Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book. Additionally, as noted above, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. For Complex Quoting Symbols, this discount is applicable when Market Makers add or remove liquidity from the complex order book. The Exchange does not propose any change to this discount. As such, Market Makers will continue to receive the two cent discount.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [13] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its

[7] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[8] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[9] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[10] A Response to a Crossing Order (other than Regular Orders in Non-Select Penny Pilot Symbols) is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. *See* ISE Schedule of Fees, Preface. The term Response to Crossing Orders was recently amended. *See* SR–ISE–2012–73.

[11] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR–ISE–2011–39).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

propensity to interact with and respond to certain types of orders.

The Exchange believes it is reasonable and equitable to charge Firm Proprietary/Broker-Dealer and Professional Customer orders a taker fee of $0.39 per contract for complex orders in the Select Symbols and Non-Select Penny Pilot Symbols, $0.40 per contract in SPY and $0.83 per contract in Non-Penny Pilot Symbols because the Exchange is seeking to recoup the cost associated with paying increased rebates for Priority Customer complex orders. The Exchange believes the proposed fees are also reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower that the fees assessed by other exchanges. For example, NASDAQ OMX PHLX, Inc. (''PHLX'') currently charges $0.45 and $0.60 per contract for Firm and Broker Dealer orders, respectively, for non-Penny Pilot symbols traded electronically on that exchange.[14] Therefore, while ISE is proposing a fee increase for Firm Proprietary/Broker-Dealer and Professional Customer orders, the resulting fee remains lower than the fee charged by PHLX for similar orders.

The Exchange believes it is reasonable and equitable to charge a fee of $0.80 per contract for Market Maker orders ($0.83 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders) when such members are responding to crossing orders because a response to a crossing order is akin to taking liquidity, thus the Exchange is proposing to adopt an identical fee for Responses to Crossing Orders in the Non-Penny Pilot Symbols as that for taking liquidity in these symbols.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. Accordingly, Market Makers that remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) $0.35 per contract in the Select Symbols; (ii) $0.36 per contract in SPY; (iii) $0.35 per contract in the Non-Select Penny Pilot Symbols; and (iv) $0.78 per contract in the Non-Penny Pilot Symbols Select Symbols. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business while at the same time create a certain level of standardization in complex order pricing across symbols that make up the majority of the daily volume in options trading. With this proposed rule change, the Exchange is standardizing the complex order taker fee for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols. With this proposed rule change, the Exchange is also standardizing the fee for Responses to Crossing Orders for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders in the Non-Penny Pilot Symbols.

The Exchange further believes that the Exchange's maker/taker fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed fee change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–85. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

[14] *See* NASDAQ OMX PHLX LLC Pricing Schedule at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F.*

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–85 and should be submitted on or before November 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–25498 Filed 10–16–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68039; File No. SR–NSX–2012–15]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Amending NSX Rule 15.5 To Comply With the Requirements of Exchange Act Rule 10C–1

October 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2012, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which filing was amended and replaced in its entirety by Amendment No. 1 on October 10, 2012, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend NSX Rule 15.5 to incorporate additional listing standard requirements applicable to issuers of equity securities listed on the Exchange as required by the provisions of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act''), which added Section 10C to the Securities Exchange Act of 1934, as amended (''Exchange Act''), and Exchange Act Rule 10C–1 which implements these requirements.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 1 to SR–NSX–2012–15 (the ''Filing'') amends and replaces in its entirety the Filing as originally submitted on September 26, 2012. The Exchange is proposing Amendment No. 1 to (i) reflect the approval of the Filing by the Executive Committee of the Exchange's Board of Directors and the Regulatory Oversight Committee, (ii) amend the rule text to propose transition periods under NSX Rule 15.5(b), and add corresponding language to the Purpose section, (iii) propose to exempt small business [sic] as defined under Exchange Act Rule 12b–2 and clarify [sic] basis for other proposed exemptions to NSX Rule 15.5 and (iv) remedy editorial inconsistencies in the rule text. [sic]

The Dodd-Frank Act[3] added Section 10C to the Exchange Act.[4] Section 10C requires the Commission to adopt rules directing the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with Section 10C's compensation committee and compensation adviser requirements. On June 20, 2012, the SEC adopted Rule 10C–1 to implement the requirements of Section 10C, which directs the national securities exchanges to adopt listing rules effectuating the compensation committee and compensation adviser requirements of Section 10C.[5]

The Exchange is proposing to amend NSX Rule 15.5 in accordance with Exchange Act Rule 10C–1 to: (i) Prohibit the listing or continued listing of an equity security for a listed company that is not in compliance with the requirements set forth in NSX Rule 15.5, (ii) clarify the definition of ''independence'' as applicable to members of the ''compensation committee'', (iii) clarify the definition of the term compensation committee as used in NSX Rule 15.5, (iv) authorize the compensation committee to retain, compensate and oversee the work of the compensation advisers, and (v) require a compensation committee to consider the independence of a compensation adviser prior to retaining their services.

Composition of Compensation Committees

Section 10C(a)(1) of the Exchange Act required the Commission to adopt rules directing each national securities exchange registered under Section 6 of the Exchange Act, and certain national securities associations registered pursuant to Section 15A of the Exchange Act, to establish listing standards requiring a listed company's compensation committee to be comprised of independent members of the board of directors. Section 10C(a)(3) of the Exchange Act and Exchange Act Rule 10C–1(b) require Exchanges to adopt an independence standard for members of a compensation committee after considering the following factors: (i) The director's source of compensation including fees derived from consulting or other advisory or compensatory fees paid by the listed company to the director and listed company (ii) whether the director is affiliated with the listed company, a subsidiary of the listed company, or an affiliate of a subsidiary of the listed company.

NSX Rule 15.5 ''Other Listing Standards'' currently requires listed companies to have a compensation committee that is composed entirely of independent directors. The Exchange now proposes to amend paragraph (a) of Rule 15.5[6] in accordance with Exchange

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Public Law 111–203, 124 Stat. 1900 (2010).

[4] 15 U.S.C. 78j–3.

[5] Release Nos. 33–9330; 34–67220 (June 20, 2012); 77 FR 38422 (June 27, 2012) (''Adopting Release'').

[6] The Commission notes that the reference to paragraph (a) is incorrect as there have been no

Act Rule 10C–1 to prohibit the listing or continued listing of any equity security of a listed company that is not in compliance with the listing requirements set forth in NSX Rule 15.5 [sic]. The Exchange has defined a compensation committee in NSX Rule 15.5(d) as ''a committee that oversees executive compensation, whether or not such committee performs other functions or is formally designated as a compensation committee.''

The Exchange's amendments also clarify the definition of ''independence'' as it pertains to members of the compensation committee in NSX Rule 15.5(d)(5)(a) by expressly enumerating relevant factors that a listed company's board of directors must consider including (i) the source of compensation of a member of the compensation committee, including any consulting [sic] advisory or other compensatory fee paid by the listed company to such member, and (ii) whether a member of the compensation committee is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company. The Exchange believes this requirement will benefit investors by ensuring that the members of the company's compensation committee that oversees executive compensation are not subject to conflicts of interest.

Authority of Compensation Committee To Retain Advisers

Section 10C(f) of the Exchange Act also required the Commission to adopt rules directing the national securities exchanges to establish listing standards which provide a compensation committee with the authority, in its sole discretion, to hire compensation consultants or outside legal counsel (''Compensation Advisers''). The compensation committee may only retain the Compensation Adviser after considering certain independence factors.[7]

Exchange Act Rule 10C–1(b)(2) provides that the compensation committee must be directly responsible for the appointment, compensation and oversight of the work of any Compensation Adviser retained by the compensation committee. Exchange Act Rule 10C–1(b)(3) also requires the listed company to provide appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to such Compensation Adviser retained by the compensation committee. However, the compensation committee must consider, prior to retaining the Compensation Adviser, independence factors that are consistent with Exchange Act Rule 10C–1(b)(4) including: (i) Whether the Compensation Adviser's employer provides other services to the listed company; (ii) the amount of fees the listed company has paid to the Compensation Adviser's employer as a percentage of the total revenue of the person that employs the Compensation Advisor; (iii) the policies and procedures designed to prevent conflicts of interest of the person that employs the Compensation Adviser; (iv) any business or personal relationship between compensation committee member and the Compensation Adviser; (v) whether the Compensation Adviser owns any of the listed company's stock; and (vi) any business or personal relationship between the Compensation Adviser or the Compensation Adviser's employer and any executive officer of the listed company.

The Exchange is proposing to amend NSX Rule 15.5(d)(5)(i)(b) [sic] to require the compensation committee's written charter to authorize the compensation committee in its sole discretion, to (i) retain a Compensation Adviser but only after considering certain factors regarding independence, and (ii) have direct responsibility for the appointment, compensation and oversight of the work performed by any Compensation Adviser on behalf of the compensation committee.

The Exchange also proposes to add NSX Rule 15.5(d)(5)(b)(i)(F) which will require a compensation committee to consider the independence factors set forth in Exchange Act Rule 10C–1(b)(4) prior to retaining a Compensation Advisor including: (i) Whether the Compensation Adviser's employer provides other services to the listed company; (ii) the amount of fees the listed company has paid to the Compensation Adviser's employer as a percentage of the total revenue of the person that employs the Compensation Advisor; (iii) the policies and procedures designed to prevent conflicts of interest of the person that employs the Compensation Adviser; (iv) any business or personal relationship between compensation committee member and the Compensation Adviser; (v) whether the Compensation Adviser owns any of the listed company's stock; and (vi) any business or personal relationship between the Compensation Adviser or the Compensation Adviser's employer and any executive officer of the listed company. The Exchange finds these proposed changes are appropriate in order to ensure that the compensation committee's decisions are not inappropriately biased towards the listed company's management.

Compensation Committee Funding

The Exchange is proposing to add paragraph (c) under NSX Rule 15.5(d)(5) which requires each listed company to provide the compensation committee with appropriate funding for the reasonable compensation of Compensation Advisers retained by the compensation committee. The level of appropriate funding and compensation is determined by the compensation committee.

Exempted Listed Companies

Exchange Act Rule 10C–1(b)(5)[8] provides an automatic exemption from the application of the entirety of Exchange Act Rule 10C–1 for controlled companies and smaller reporting companies, and Exchange Act Rule 10C–1(b)(1)(iii)(A)[9] provides an automatic exemption from the compensation committee independence requirements for limited partnerships, companies in bankruptcy, open-end management investment companies registered under the Investment Company Act of 1940 (''1940 Act''). Exchange Act Rule 10C–1(b)(1)(iii)(A) also exempts from the compensation committee independence requirements any foreign private issuer that discloses in its annual report filed with the SEC the reasons that the foreign private issuer does not have an independent compensation committee and [sic] any small business or small organization as defined by Exchange Act Rule 12b–2 [sic].[10]

The Exchange proposes that its existing exemptions from the compensation-related listing rules remain unchanged. The Exchange's current listing rules provide exemptions for; (i) controlled companies; (ii) limited partnerships and companies in bankruptcy; (iii) closed-end and open-end funds registered under the 1940 Act; (iv) passive business organizations in the form of trusts (such as royalty trusts), derivatives and special purpose securities (such as those described in NSX Rule 15.5(a)(1)), and issuers whose only listed equity security is a preferred stock. The Exchange notes that these categories of issuers typically: (i) Are externally managed and do not directly employ executives (e.g., limited partnerships that are managed by their general partner or closed-end funds

changes to paragraph (a). Further, the Commission notes that the changes are contained in Rule 15.5(d).

[7] 17 CFR 240.10C–1(b)(4).

[8] 17 CFR 240.10C–1(b)(5).

[9] 17 CFR 240.10C–1(b)(1)(iii)(A).

[10] 17 CFR 240.12b–2.

managed by an external investment adviser); (ii) do not by their nature have employees (e.g., passive business organizations in the form of trusts or issuers of derivative or special purpose securities); or (iii) have executive compensation policy set by a body other than the board (e.g., bankrupt companies have their executive compensation determined by the bankruptcy court). In light of these structural reasons why these categories of issuers generally do not have compensation committees, the Exchange believes that it would be a significant and unnecessarily burdensome alteration in their governance structures to require them to comply with the proposed new requirements and that it is appropriate to grant them an exemption.

The Exchange currently does not require issuers whose only listed security is a preferred stock to comply with NSX Rule 15.5.[11] The Exchange proposes to continue to exempt these issuers from compliance with the proposed amended rule. The Exchange believes this approach is appropriate because holders of listed preferred stock have significantly greater protections with respect to their rights to receive dividends and a liquidation preference upon dissolution of the issuer, and preferred stocks are typically regarded by investors as a fixed income investment comparable to debt securities, the issuers of which are exempt from compliance with Exchange Act Rule 10C–1.

While Exchange Act Rule 10C–1 exempts Smaller Reporting Companies from all of its requirements, Nasdaq's [sic] current listing rules do not include any such exemptions.[12] Consistent with the exemption in Exchange Act Rule 10C–1, however, The Exchange proposes to exempt smaller reporting companies [13] from compliance with the proposed new independence requirements with respect to compensation committee service.[14] Under SEC Rule 12b–2, a smaller reporting company is required to test whether it continues to qualify for that status as of the last business day of its second quarter of each fiscal year (the ''Smaller Reporting Company Determination Date'') and ceases as of the first day of the next fiscal year to be able to avail itself of the benefits under SEC rules applicable to smaller reporting companies. Consequently, the Exchange proposes to adopt a new transition provision applicable to companies that cease to be smaller reporting companies and become subject to the compensation committee independence requirements of proposed NSX Rule 15.5(d)(5).[15] As proposed, a company that ceases to be a smaller reporting company would be required, if applicable, (i) to have a committee composed entirely of members that meet the independence requirements of proposed NSX Rule 15.5(d)(5) within six months of the Smaller Reporting Company Determination Date and (ii) to comply with NSX Rule 15.5(d)(i)(F) [sic] as of the Smaller Reporting Company Determination Date.

Transition Periods

The Adopting Release contemplates that exchanges may provide transition periods through the exemptive authority provided to the exchanges under Exchange Act Rule 10C–1(b)(1)(iii).[16] Consistent with the transition periods approved by the SEC for inclusion in Rule 15.5 at the time of its original adoption,[17] the Exchange proposes to amend NSX Rule 15.5(b) to provide that listed companies would have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the new NSX Rule 15.5(d)(5) compensation committees independence standards. Existing compensation committee independence standards would continue to apply pending the transition to the new independence standards. The Exchange believes that its prior use of a similar transition period was satisfactory and that it is reasonable to follow the same approach in connection with the proposed changes to the compensation committee independence standards.

Opportunity To Cure Defects

As permitted under Exchange Act Rule 10C–1(a)(3), the Exchange is amending Rule 15.5(d)(5)(d) to provide listed companies with a reasonable opportunity to cure any non-compliance with the Rule's compensation committee listing requirements that could result in a delisting of the listed company's securities. As outlined in the proposed rule changes, listed companies that fail to comply with the requirements will be subject to the delisting procedures set forth in Exchange Rule 15.7 unless the deficiencies are cured within forty-five days from the date of notification by the Exchange. However, if a member of the Compensation committee ceases to be independent for reasons outside of the member's control, that person, with notice by the listed company to the Exchange may remain a Compensation committee member of the listed company until the earlier of the next annual shareholders' meeting of the listed company or one year from the occurrence of the event that caused the member to be no longer independent.

The proposed changes are intended to benefit investors by (a) requiring independent directors of a listed companies to oversee executive compensation matters, (b) consider the independence of any adviser to the compensation committee prior to retention, and (c) be responsible for the appointment, compensation, and oversight of these advisers.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 10C of the Exchange Act.[18] The statutory basis for the proposed rule change is Section 6 of the Securities Exchange Act of 1934 (the ''Act'') [19] in general, which requires the rules of an exchange to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes the proposed rule change is consistent with Exchange Act Rules 10C–1(b)(1), 10C–1(b)(4) and 10C–1(b)(2)(ii) [20] requiring that the rules of an exchange: provide specific director independence standards; supply governing standards regarding the responsibility of a compensation committee for the appointment, supervision, and compensation of compensation consultants and advisers; and apply these standards to any directors who oversee compensation matters, in the absence of a formal compensation committee, on behalf of the board of directors.

In particular, the proposed rule change will benefit investors by

[11] NSX Rule 15.5(a)(2).

[12] *See* 17 CFR 240.10C–1(b)(5)(ii).

[13] As defined in SEC Rule 12b–2 and Item 10(f) of Regulation S–K.

[14] NSX Rule 15.5(d)(5)(e).

[15] A company that is otherwise exempt from the requirement to have an independent compensation committee when it ceases to be a smaller reporting company would not, of course, be subject to a transition period. See discussion *infra.*

[16] *See* Adopting Release at 38444.

[17] *See* Securities Exchange Act Release No. 51691 (May 12, 2005), 70 FR 28973 (May 19, 2005) (SR–CSE–2003–06).

[18] 15 U.S.C. 78j–3.

[19] 15 U.S.C. 78fb–5.

[20] 17 CFR 240.10C–1(b)(1), (b)(4) and (b)(2)(ii).

requiring that the independent directors of a listed company oversee executive compensation matters, consider uniform independence criteria before hiring Compensation Advisers, and have the authority to supervise, retain and compensate these advisers. By implementing Section 10C in such a manner, the proposed amended rule does not allow listed companies to avoid the listing standards by not having a specific compensation committee or another committee that performs similar functions.

The proposed rule change is non-discriminatory and is applicable to all listed companies on the Exchange, unless specifically exempted under proposed Rule 15.5(a) and 15.5(d)(5)(e). The Exchange believes that the general exemptions from the proposed requirements that it is granting to foreign private issuers and smaller reporting companies are consistent with Section 10C and Rule 10C–1, for the reasons stated above in the ''Purpose'' section, including because (i) Rule 10C–1(b)(5)(ii) explicitly exempts smaller reporting companies and (ii) foreign private issuers will comply with their home country law and, if they avail themselves of the exemption, will be required to disclose that fact under existing Exchange listing requirements. The Exchange believes it is an appropriate use of its exemptive authority under Exchange Act Rule 10C–1(b)(5)(i), and that it is not unfairly discriminatory under Section 6(b)(5) of the Act, to provide general exemptions under the proposed rules to issuers whose only listed class of equity securities on the Exchange is a preferred stock, as holders of listed preferred stock have significantly greater protections with respect to their rights to receive dividends and a liquidation preference upon dissolution of the issuer, and preferred stocks are typically regarded by investors as a fixed income investment comparable to debt securities, the issuers of which are exempt from compliance with Exchange Act Rule 10C–1. The Exchange believes that it is an appropriate use of its exemptive authority under Rule 10C–1(b)(5)(i), and that it is not unfairly discriminatory under Section 6(b)(5) of the Act, to provide general exemptions under the proposed rules for all of the other categories of issuers that are not currently subject to the Exchange's compensation committee requirement, for the structural reasons discussed in the ''Purpose'' section and because it would be a significant and unnecessarily burdensome alteration in their governance structures to require them to comply with the proposed new requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2012–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2012–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2012–15, and should be submitted on or before November 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–25433 Filed 10–16–12; 8:45 am]

BILLING CODE 8011–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS450]

WTO Dispute Settlement Proceeding Regarding China—Certain Measures Affecting the Automobile and Automobile-Parts Industries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (AUSTR@) is providing notice that on September 17, 2012, the United States requested consultations with the People's Republic of China (''China'') under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning certain measures that appear to provide subsidies such as grants, loans, forgone government revenue, the provision of goods and services, and other incentives contingent upon export performance to

[21] 17 CFR 200.30–3(a)(12).

automobile and automobile-parts enterprises in China. These measures appear to be prohibited subsidies that are inconsistent with China's obligations under Article 3 of the *Agreement on Subsidies and Countervailing Measures* (''SCM Agreement''). In addition, it appears that China has failed to comply with its transparency obligations under the WTO Agreement. The consultation request may be found at *www.wto.org* contained in a document designated as WT/DS450/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 12, 2012, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2012–0030. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, Assistant General Counsel, or Shannon Nestor, Assistant General Counsel, (202) 395–3150, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

On September 17, 2012, the United States requested consultations with China concerning certain subsidies that appear to be contingent upon export performance provided to automobile and automobile-parts enterprises in China. Specifically, the United States is challenging various forms of export-contingent subsidies that China appears to provide through a program establishing ''export bases'' for the automobile and automobile-parts industries within China. China appears to provide export-contingent subsidies to the automobile and automobile-parts enterprises that are located in these ''export bases'' or that are designated as ''export base'' enterprises. To date, it appears that China has created automobile and automobile-parts ''export bases'' in the following twelve municipalities: Wuhan, Tianjin, Chongqing, Shanghai, Guangzhou, Hefei, Wuhu, Xiamen, Taizhou, Changchun, Baoding, Liuzhou, as well as in other localities in the provinces of Jiangsu, Shandong, Shanxi, Henan, Inner Mongolia, Heilongjiang, Liaoning, Hunan, Zhejiang, Yunnan, Guangdong, Fujian, Anhui, and Beijing city.

In its request for consultations, the United States identified measures that appear to provide the subsidies through China's automobile and automobile-parts ''export bases'' that include, but are not limited to, the following legal instruments, operating separately or collectively, as well as any amendments, or related, successor, replacement, or implementing measures: Policy on Development of Automotive Industry; Policies for Automobile Trade; Notice Regarding Application for National Automobile and Automobile Parts Export Base Enterprises; Circular of the State Council on Printing, Distributing and Implementing Several Supporting Policies for the Outline of National Medium- and Long-Term Science and Technology Development Plan (2006–2020); Circular of the General Office of the State Council on Forwarding the Several Opinions of MOFCOM and other Departments on the 11th FYP for Electromechanical Exports Growth Model; Decision To Designate 8 National Automobile and Automobile Parts Export Bases, MOFCOM; MOFCOM, NDRC Names 160 Companies as National Export Base Enterprises; Interim Measures on the Management of Fund for Optimizing Import and Export Structure of Electromechanical and High-Tech Products, Ministry of Commerce and Ministry of Finance; MOFCOM, NDRC Conference Notice on National Automobile Exports; Notice of MOFCOM and NDRC on Issuing the Measures for the Administration of National Export Bases of Automobiles and Parts and Components (for Trial Implementation); Opinions on Maintaining the Steady Growth of Foreign Trade; 2009 State Council General Office Notice on Automobile Industry Restructuring and Revitalization Planning (for planning period 2009–2011); Notice on Implementation of Online Application for the Central Foreign Trade Development Fund; Opinions of MOFCOM, NDRC, MIIT, MOF, Customs and AQSIQ on Enhancing the Sustainable and Healthy Development of the Export of Automobile Products of China; Notice of Examination Results of the National Automobile and Automobile Parts Export Bases; Opinions on Promoting the Continued Healthy Development of Electromechanical Exports During the 12th Five-Year Plan; Notice of MOFCOM and NDRC on Issuing the Measures for the Administration of National Export Bases of Automobiles and Parts and Components (Revised Draft); MOFCOM, NDRC Accreditation and Assessment of Automobiles and Automobile Parts Export Bases (Draft for Comment); MOF and MOFCOM Notice Regarding Sound Management of the 2011 Foreign Trade Common Services Platform Establishment Fund; MOF and MOFCOM Notice Regarding the Sound Management of the 2010 Common Services Platform Establishment Fund; MOF Notice Regarding Arranging the 2011 Foreign Trade Common Services Platform Establishment Fund; MOFCOM and MOF Notice on Management of Funds To Maintain the Steady Growth of Foreign Trade; Wuhan Automobile and Automobile Parts Status Report and Development Plan (2006–2010); Wuhan Municipal Opinion on Automobile and Automobile Parts Exports; Tianjin Outline of Eleventh Five-Year Plan of Economic and Social Development; Circular of Tianjin Commerce Commission on Printing and Distributing the Measures for the Recognition and Management of Tianjin Automobile and Automobile Parts Export Base Enterprises; Tianjin Notice on the Adjustment of Members of Tianjin National Automobile and Automobile Parts Export Bases; Forwarding the Opinions on Accelerating the Construction of Tianjin National Automobile and Automobile Parts Export Base; Chongqing City Management of Automobile and Automobile Parts Export Base Enterprises; Opinions of the Chongqing Municipal People's Government on the Construction of Automobile and Automobile Parts Export Base; Chongqing Circular on Establishment of a Leading Group for the Construction of Chongqing Automobile and Automobile Parts Export Bases; Chongqing 2011

Notice Regarding the Application Work for the 2011 Chongqing Foreign Trade Common Services Platform Establishment Special Fund Program; Shanghai Foreign Economic and Trade Development ''Eleventh Five-Year Plan''; Shanghai Municipal Commission of Commerce and the Municipal Finance Bureau 2012 Notice for the Application of the 2011 Shanghai Foreign Trade Common Services Platform Establishment Special Fund Program; Printing and Issuing the Work Plan for the Application of Guangzhou for National Automobile and Automobile Parts Export Base and Export Base Enterprises; Opinions on Accelerating the Construction of National Automobile and Automobile Parts Export Base in Guangzhou; Interim Measures for the Management of National Automobile and Automobile Parts Export Base Guangzhou Sub-Base (Valid for 5 years or until 2013); Circular of Guangzhou Foreign Trade and Economic Cooperation Bureau on Verifying Conghua City as the Guangzhou Conghua National Automobile and Automobile Parts Export Base; 2011 Circular of Application for Special Fund of Guangzhou Automobile and Automobile Parts Export Base; 2011 Circular of Application for Special Fund of Guangzhou Automobile and Automobile Parts Export Base Attachment One: Application Form for the Guangzhou Municipal Automobile and Automobile Parts Export Base Dedicated Funding Project; 2011 Circular of Application for Special Fund of Guangzhou Automobile and Automobile Parts Export Base Attachment Two: Feasibility Analysis Report for the Guangzhou Municipal Automobile and Automobile Parts Export Base Dedicated Funding Project (Reference Sample); Guangdong Province 2011 Notice Regarding the Work To Manage Well the Foreign Trade Common Services Platform Establishment Fund; Notice on Hefei City Automobile and Automobile Parts Export Base Support Fund Management Method (Interim Measures); Anhui Notice Regarding Investigation of Received Applications for National Automobile and Automobile Parts Export Base and Enterprises; Anhui Regarding Applications for Electro-mechanical Product Imports and Exports Structure Fund Program; Anhui Province Opinions Regarding Expediting Equipment Manufacturing; Xiamen Municipal Notice on Automobile Industry Development Action Plan; Notice of Xiamen on the Management of Special Funds To Maintain Steady Growth of Foreign Trade (Trial Implementation); Notice of Xiamen on the Management of Electromechanical and High-Tech Products Export Adjustment Programs; Xiamen City 2001 Notice on the Issuance of the Interim Measures on Management of Outsourcing Services Common Services Platform Special Construction Fund; Taizhou Municipal Opinions on the Promotion of Stable and Healthily Developing Foreign Trade; Opinions From the Peoples Government of Zhejiang Province on Promoting the Stable and Healthy Development of Province-Wide Foreign Trade; Zhejiang Notice on the Management of the 2011 Foreign Trade Common Services Platform Construction Special Fund; Liuzhou Municipal Opinion on Encouraging Exports of Automobile and Automobile Parts; Guangxi Zhuang Autonomous Region Policy Opinion To Support the Development of the Automobile Industry; Reply of the Economic Commission of Guangxi Zhang Autonomous Region on Approving the Registration of Automotive Chassis Core Parts Technological Upgrading and Export Base Construction Project of Liuzhou Wuling Automobile United Development Co., Ltd.; Notice on Management of Special Funds To Maintain the Steady Growth of Foreign Trade (Jilin); Changchun Xinglong Comprehensive Bonded Zone Automobile Import/Export Base Project; Jilin Province Opinion on Automobiles and Automobile Parts Exports; Jilin Province Opinion on Accelerating the Development of Automobile Parts; Jilin Province Management and Implementation Measures on Funds To Maintain Steady Growth of Foreign Trade; Jilin Province Notification for Organizations To Apply for the 2011 Foreign Common Services Platform Establishment Fund; Hebei Province Opinion on Broadening Opening to the Outside World To Accelerate the Development of Open Economy; Hebei Province 2011 Notice Regarding Sound Management of the Foreign Trade Common Services Platform Establishment Fund; Notice on Jiangsu Province Export Base Support Methods; Jiangsu Province Interim Measures on Management of Funds To Maintain a Steady Growth of Foreign Trade; Circular on the Pilot Accreditation and Management of Shandong Province Electro-Mechanical Products Export Bases and Notice To Begin the Accreditation of the First Batch of Export Bases; Shanxi Province Management Measures on Special Funds To Maintain Steady Growth of Foreign Trade; 2012 Inner Mongolia Autonomous Region Work Plan for the Establishment of Electro-Mechanical and High-Tech Industry Export Base; Henan Province Opinion To Promote the Sustained and Healthy Development of Foreign Trade; 2009 Heilongjiang Province Opinion To Further Sustain the Stable Growth of Foreign Trade; Measures Administering, Operating, Funding or Specifying the Forms of Support Provided to Automobile or Automobile Parts Enterprises Within Any Automobile and Automobile Parts Export Base; and Measures Administering, Operating, Funding or Specifying the Forms of Support Pprovided to Automobile or Automobile Parts Enterprises in Jiangsu, Shandong, Anhui, Jiangxi. Liaoning, Heilongjiang, Hunan, Inner Mongolia, Shanxi, Zhejiang, Yunnan, Guangdong, Hebei, Fujian, Henan provinces, and Beijing City.

In addition, it appears that China has failed to comply with its transparency obligations in regards to these export-contingent subsidies. In particular, the United States has explained that the measures appear to be inconsistent with Articles 3, 25.1, 25.2, 25.3, and 25.4 of the SCM Agreement; Article XVI:1 of the *General Agreement on Tariffs and Trade 1994;* and Paragraphs 1.2, 2(C)(1), and 2(C)(2) of Part I of the *Protocol on the Accession of the People's Republic of China.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0030. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0030 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use Regulations.gov'' on the bottom of the page.)

The *www.regulations.gov* site provides the option of providing

comments by filling in a ''Type Comments'' field or by attaching a document using an ''upload file'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov,* docket number USTR–2012–0030.

The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Juan Millan,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–25462 Filed 10–16–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 6, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0164.

Date Filed: October 1, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 2012.

Description: Application of K5-Aviation GmbH requesting an exemption and a foreign air carrier permit authorizing K5-Aviation to engage in: (i) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union, via any point or points in any EU Member State and via intermediate points, to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign charter air transportation of cargo between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements set forth in the Department's regulations governing charters; and (v) charter transportation authorized by any additional route rights made available to European Union carriers in the future, to the extent permitted by the Applicant's homeland license on file with the Department.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–25513 Filed 10–16–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35638]

New Jersey Transit Corporation—Acquisition Exemption—Norfolk Southern Railway Company

The New Jersey Transit Corporation (NJ Transit), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Norfolk Southern Railway Company (NSR) an approximately 1.3-mile portion of the property commonly known as the ''Orange Industrial Track'' in Essex County, N.J., from milepost 8.616 to milepost 9.905 (the Line). NJ Transit states that, under the proposed transaction, NSR would transfer to NJ Transit the real property and railroad fixtures associated with the Line. According to NJ Transit, NSR will retain an exclusive operating easement to continue to provide freight rail service over the Line.[1]

NJ Transit states the proposed transaction has been agreed upon pursuant to an Exchange Agreement, Quitclaim Deed, Second Operating Agreement, and Trackage Rights Agreement by and between NJ Transit and NSR. According to NJ Transit, it is acquiring the property to ensure access to a maintenance facility to support its light rail operations, and it is not acquiring any freight operating rights. NJ Transit also states that the agreement

[1] A motion to dismiss this notice of exemption on the grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

does not contain any provisions that would limit interchange with a third party.

NJ Transit certifies that, because it will not conduct any rail carrier operations on the Line, its projected revenues from freight operations will not result in the creation of a Class I or Class II carrier.

NJ Transit states that it expects to consummate the proposed transaction at the conclusion of this exemption proceeding. The earliest this transaction may be consummated is October 31, 2012, the effective date of the exemption (30 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 24, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35638, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Ave. NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at ''WWW.STB.DOT.GOV.''

Decided: October 12, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–25534 Filed 10–16–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–POL, U.S. Income Tax Return for Certain Political Organizations.

DATES: Written comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Certain Political Organizations.

OMB Number: 1545–0129.

Form Number: 1120–POL.

Abstract: Certain political organizations file Form 1120–POL to report the tax imposed by Internal Revenue Code section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under Code section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 6,527.

Estimated Time per Respondent: 36 hours, 38 min.

Estimated Total Annual Burden Hours: 239,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 27, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–25175 Filed 10–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2000–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2000–28, Coal Exports.

DATES: Written comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Coal Exports.

Notice Number: 1545–1690.

Abstract: Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale of coal for export.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 10, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–25468 Filed 10–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2009–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Notice 2009–52, Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination With Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.

DATES: Written comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination With Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.

OMB Number: 1545–2145.

Form Number: Notice 2009–52.

Abstract: This notice provides a description of the procedures that taxpayers will be required to follow to make an irrevocable election to take the investment tax credit for energy property under § 48 of the Internal Revenue Code in lieu of the production tax credit under § 45. This election was created by the American Recovery and Reinvestment Act of 2009, H.R. 1, 123 STAT. 115 (the Act), which was enacted on February 17, 2009. This notice includes information about election procedures and the documentation required to complete the election. The notice also discusses the coordination of this irrevocable election with an election to take a Department of Treasury grant for specified energy property.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This notice is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 10, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–25470 Filed 10–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning notice of medical necessity criteria under the mental health parity and addition equity act of 2008.

DATES: Written comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Notice of Medical Necessity Criteria under the Mental Health Parity and Addition Equity Act of 2008.

OMB Number: 1545–2165.

Regulation Project Number: REG–120692–09.

Abstract: This document contains interim final rules implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, which requires parity between mental health or substance use disorder benefits and medical/surgical benefits with respect to financial requirements and treatment limitations under group health plans and health insurance coverage offered in connection with a group health plan.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit organizations.

Estimated Number of Respondents: 223,200.

Estimated Time per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 10, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–25465 Filed 10–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning information reporting by passport and permanent residence applicants.

DATES: Written comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Information Reporting by Passport and Permanent Residence Applicants.

OMB Number: 1545–1359.

Regulation Project Number: INTL–978–86.

Abstract: This regulation requires applicants for passports and permanent residence status to report certain tax information on the applications. The regulation is intended to enable the IRS to identify U.S. citizens who have not filed tax returns and permanent residents who have undisclosed sources of foreign income to notify such persons of their duty to file United States Tax returns.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents for Passport Applicants: 5,000,000.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours for Passport Applicants: 500,000 hours.

Estimated Number of Respondents for Permanent Residence Applicants: 500,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours for Permanent Residence Applicants: 250,000 hours.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 10, 2012.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2012–25466 Filed 10–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8633

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8633, Application to Participate in the IRS *e-file* Program.

DATES: Written comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665 or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application to Participate in the IRS *e-file* Program.

OMB Number: 1545–0991.

Form Number: 8633.

Abstract: Form 8633 is used by tax preparers, electronic return collectors, software firms, service bureaus and electronic transmitters as an application to participate in the electronic filing program covering individual income tax returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 10, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–25469 Filed 10–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8824

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8824, Like-Kind Exchanges.

DATES: Written comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Like-Kind Exchanges.

OMB Number: 1545–1190.

Form Number: 8824.

Abstract: Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such

transactions under Internal Revenue Code section 1031. It is also used to report the deferral of gain under Code section 1043 from conflict-of-interest sales by certain members of the executive branch of the Federal government.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 53,490.

Estimated Number of Respondent: 15 hours, 46 minutes.

Estimated Total Annual Burden Hours: 834,979.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 10, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–25473 Filed 10–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution; Form 5305–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; Notice 98–4, Simple IRA Plan Guidance.

DATES: Written comments should be received on or before December 17, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms, instructions, and notice should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution, Form 5304–SIMPLE; Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution, Form 5305–SIMPLE; SIMPLE IRA Plan Guidance (Notice 98–4).

OMB Number: 1545–1502.

Form Number: Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4.

Abstract: Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). Form 5305–SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institution. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

Current Actions: There are no changes for the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations not-for-profit institutions, and individuals.

Estimated Number of Respondents: 600,000.

Estimated Time per Respondent: 3 hours, 31 minutes.

Estimated Total Annual Burden Hours: 2,113,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 28, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–25180 Filed 10–16–12; 8:45 am]

BILLING CODE 4830–01–P

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; Listing 15 Species on Hawaii Island as Endangered and Designating Critical Habitat for 3 Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Number FWS–R1–ES–2012–0070: 4500030113]

RIN 1018–AY09

Endangered and Threatened Wildlife and Plants; Listing 15 Species on Hawaii Island as Endangered and Designating Critical Habitat for 3 Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list 15 species on the Hawaiian island of Hawaii as endangered species under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat for 1 of these species. For the remaining 14 species that we are proposing to list in this rule, we find that critical habitat is not determinable at this time. We also propose to designate critical habitat for two plant species that were listed as endangered species in 1986 and 1994. The proposed critical habitat designation totals 18,766 acres (ac) (7,597 hectares (ha)), and includes both occupied and unoccupied habitat. Approximately 55 percent of the area being proposed as critical habitat is already designated as critical habitat for 42 plants and the Blackburn's sphinx moth (*Manduca blackburni*). In addition, we propose a taxonomic change for one endangered plant species.

DATES: We will accept comments received on or postmarked on or before December 17, 2012. Please note that if you are using the Federal eRulemaking Portal (See **ADDRESSES** section below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by December 3, 2012.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for FWS – R1–ES–2012–0070, which is the docket number for this proposed rule. You may submit a comment by clicking on "Comment Now!"
- *U.S. Mail or Hand Delivery:* Public Comments Processing, Attn: FWS–R1–ES–2012–0070; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

The coordinates or plot points or both from which the maps were generated are included in the administrative record for the proposed critical habitat designation and are available at *http://www.fws.gov/pacificislands, http://www.regulations.gov* at Docket No. FWS–R1–ES–2011–0070, and at the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the above locations.

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, we are required to list a species if we determine that it meets the definition of an endangered species or a threatened species as defined in the Act. If this determination is made, we publish a proposed rule in the **Federal Register**, seek public comment on our proposal, and issue a final rule. This action consists of a proposed rule to list 15 species (13 plants, 1 insect (picture-wing fly), and 1 crustacean (anchialine pool shrimp)) from the Island of Hawaii in the State of Hawaii, as endangered. Further, under the Act, we are to designate critical habitat to the maximum extent prudent and determinable concurrently with a listing determination. We are proposing to designate critical habitat concurrently with listing for the plant *Bidens micrantha* ssp. *ctenophylla,* due to the imminent threat of urban development to 98 percent of the individuals known for this species and its habitat within the lowland dry ecosystem. In addition, we are proposing to designate critical habitat for two previously listed plant species. *Isodendrion pyrifolium,* listed as an endangered species on March 4, 1994 (59 FR 10305), and *Mezoneuron kavaiense,* listed as an endangered species on July 8, 1986 (51 FR 24672). These species co-occur with *Bidens micrantha* ssp. *ctenophylla* in the same lowland dry ecosystem, but do not have designated critical habitat on Hawaii Island. We are also correcting critical habitat unit maps for *Cyanea shipmanii, Phyllostegia racemosa, Phyllostegia velutina,* and *Plantago hawaiensis* to accurately reflect the designated critical habitat units for those plant species. These map corrections do not change the designated critical habitat for these plants. For the remaining 14 species that we are proposing to list in this rule, we find that critical habitat is not determinable at this time. This proposed rule is organized by ecosystem, which will allow the Service to better prioritize, direct, and focus conservation and recovery actions on Hawaii Island.

The basis for our action. Under the Endangered Species Act, a species may be determined to be an endangered species or a threatened species based on any of five factors: (1) Destruction, modification, or curtailment of its habitat or range; (2) Overuse; (3) Disease or predation; (4) Inadequate existing regulations; or (5) Other natural or manmade factors.

One or more of the species proposed for listing in this rule face the following threats related to these criteria:

- Habitat loss and degradation due to agriculture and urban development; nonnative feral ungulates (*e.g.,* pigs, goats) and plants; wildfire; hurricanes; flooding; and drought.
- Predation or herbivory by nonnative feral ungulates, rats, snails, and slugs.
- Inadequate existing regulatory mechanisms to prevent the introduction and spread of nonnative plants and animals.
- Small number of individuals and populations, and lack of reproduction in the wild.

This rule proposes to designate critical habitat for 3 plant species.

- Approximately 18,766 acres (7,597 hectares) is being proposed as critical habitat in seven multi-species critical habitat units on lands owned by the U.S. National Park Service, State of Hawaii, County of Hawaii, and private interests.
- Approximately 55 percent, or 10,304 acres (4,170 hectares), of the area being proposed as critical habitat overlaps with areas already designated as critical habitat for previously listed plant and animal species.
- Approximately 45 percent, or 8,464 acres (3,426 hectares), of the area does not overlap with areas already designated as critical habitat for previously listed plant and animal species.

• The proposed critical habitat units encompass areas containing physical and biological features essential to the conservation of these species and that may require special management considerations, or are otherwise essential for the conservation of these species.

• The proposed designation includes both occupied and unoccupied critical habitat for the three species for which we are proposing to designate critical habitat.

• The Secretary may exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species. We are considering excluding approximately 4,102 acres of privately owned and State lands from the critical habitat designation.

We are preparing an economic analysis of the proposed critical habitat designation. To consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. We will use information from this analysis to inform the development of our final designation of critical habitat for these species.

We will seek peer review. We will obtain opinions from knowledgeable individuals with scientific expertise regarding our technical assumptions, analysis, adherence to regulations, and use of the best available information.

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we solicit comments or suggestions on this proposed rule from other concerned governmental agencies, the scientific community, industry, or other interested parties concerning this proposed rule. We are proposing to list 15 species (13 plants, 1 anchialine pool shrimp, and 1 picture-wing fly) as endangered species. We are also proposing to designate critical habitat for one of the proposed endangered plant species and two plant species that are already listed as endangered species, but that do not have designated critical habitat on Hawaii Island. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning threats (or the lack thereof) to the 15 species proposed for listing, and the adequacy of the existing regulations that may be addressing those threats.

(2) Additional information concerning the range, distribution, and population sizes of each of the 15 species proposed for listing, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of the 15 species proposed for listing.

(4) Current or planned activities within the area being proposed for critical habitat and possible impacts to these activities.

(5) The reasons why we should or should not designate areas for *Bidens micrantha* ssp. *ctenophylla, Mezoneuron kavaiense* (taxonomic revision proposed for *Caesalpinia kavaiense* to *Mezoneuron kavaiense*), and *Isodendrion pyrifolium* as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). We specifically seek information on any threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would outweigh threats to these species caused by the designation, such that the designation of critical habitat is prudent.

(6) Specific information on:

• The amount and distribution of critical habitat for the species included in this proposed rule;

• Areas that are currently occupied and contain the necessary physical or biological features essential for the conservation of the species that we should include in the designation, and why;

• Whether special management considerations or protections may be required for the physical or biological features essential to the conservation of the species in this proposed rule; and

• What areas outside the geographical area occupied at the time of listing are essential to the conservation of the species, and why.

(7) Any reasonably foreseeable economic, national security, or other relevant impacts of the proposed critical habitat designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas that may experience these impacts.

(8) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation. Under section 4(b)(2), the Secretary may exclude an area from critical habitat if he or she determines that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We request specific information on:

• The benefits of and supporting rationale for including specific areas in the final designation;

• The benefits of and supporting rationale for excluding specific areas from the final designation; and

• Whether any specific exclusions may result in the extinction of the species, and why.

(9) Whether the private and State lands being considered for exclusion from critical habitat designation under section 4(b)(2) of the Act should or should not be excluded, and why.

(10) Information on the projected and reasonably likely impact of climate change on the species included in this proposed rule, and any special management needs or protections that may be needed in the critical habitat areas we are proposing.

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(12) Specific information on ways to improve the clarity of this rule as it pertains to completion of consultations under section 7 of the Act.

(13) Comments on our proposal to revise the taxonomic classification for *Caesalpinia kavaiense to Mezoneuron kavaiense.*

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, such as your street address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at

http://www.regulations.gov, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule by mail from the Pacific Islands Fish and Wildlife Office (See **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov.*

Background

Hawaii Island Species Addressed in This Proposed Rule

Table 1 below provides the scientific name, common name, listing status, and critical habitat status for the species that are the subjects of this proposed rule.

TABLE 1—THE HAWAIIAN ISLAND SPECIES ADDRESSED IN THIS PROPOSED RULE (NOTE THAT MANY OF THE SPECIES SHARE A COMMON NAME. "E" DENOTES ENDANGERED STATUS UNDER THE ACT; "C" DENOTES A SPECIES CURRENTLY ON THE CANDIDATE LIST.)

Scientific name	Common name(s)	Listing status	Critical habitat status
Plants			
Bidens hillebrandiana ssp. *hillebrandiana.*	kookoolau	Proposed—Endangered	Not determinable.
Bidens micrantha ssp. *ctenophylla*	kookoolau	Proposed—Endangered (C)	Proposed.
Caesalpinia kavaiense (taxonomic revision proposed, to *Mezoneuron kavaiense*).	uhiuhi	Listed 1986—E	Proposed.
Cyanea marksii	haha	Proposed—Endangered	Not determinable.
Cyanea tritomantha	aku	Proposed—Endangered (C)	Not determinable.
Cyrtandra nanawaleensis	haiwale	Proposed—Endangered	Not determinable.
Cyrtandra wagneri	haiwale	Proposed—Endangered	Not determinable.
Isodendrion pyrifolium	wahine noho kula	Listed 1994—E	Proposed.
Phyllostegia floribunda	no common name (NCN)	Proposed—Endangered (C)	Not determinable.
Pittosporum hawaiiense	hoawa, haawa	Proposed—Endangered	Not determinable.
Platydesma remyi	NCN	Proposed—Endangered (C)	Not determinable.
Pritchardia lanigera	loulu	Proposed—Endangered	Not determinable.
Schiedea diffusa ssp. *macraei*	NCN	Proposed—Endangered	Not determinable.
Schiedea hawaiiensis	NCN	Proposed—Endangered	Not determinable.
Stenogyne cranwelliae	NCN	Proposed—Endangered (C)	Not determinable.
Animals			
Drosophila digressa	picture-wing fly	Proposed—Endangered (C)	Not determinable.
Vetericaris chaceorum	anchialine pool shrimp	Proposed—Endangered (C)	Not determinable

[NCN] = no common name.

Previous Federal Actions

Seven of the 15 species proposed for listing are candidate species (76 FR 66370; October 26, 2011). Candidate species are those taxa for which the Service has sufficient information on their biological status and threats to propose them for listing as endangered or threatened species under the Act, but for which the development of a listing regulation has been precluded to date by other higher priority listing activities. The current candidate species addressed in this proposed listing rule include the five plants *Bidens micrantha* ssp. *ctenophylla, Cyanea tritomantha, Phyllostegia floribunda, Platydesma remyi,* and *Stenogyne cranwelliae;* and the anchialine pool shrimp *Vetericaris chaceorum,* and the picture-wing fly *Drosophila digressa.* The candidate status of all of these species was most recently assessed and reaffirmed in the October 26, 2011, Review of Native Species that are Candidates for Listing as Endangered or Threatened (CNOR) (76 FR 66370).

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals, including the 7 candidate species listed above, as endangered or threatened under the provisions of the Act. Since then, we have published our annual findings on the May 4, 2004, petition (including our findings on the 7 candidate species listed above) in the CNORs dated May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69034), and December 10, 2008 (73 FR 75176), November 9, 2009 (74 FR 57804), November 10, 2010 (75 FR 69222), and October 26, 2011 (76 FR 66370). This proposed rule constitutes a further response to the 2004 petition.

In addition to the seven candidate species, we are proposing to list four plant species, *Cyanea marksii, Cyrtandra wagneri, Schiedea diffusa* ssp. *macraei,* and *Schiedea hawaiiensis,* that have been identified as the "rarest of the rare" Hawaiian plant species in need of immediate conservation under the multi-agency (Federal, State, and private) Plant Extinction Prevention Program (PEPP). The goal of PEPP is to prevent the extinction of plant species that have fewer than 50 individuals remaining in the wild on the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii (PEPP 2012, in litt.). We have determined that these four plant species warrant listing under the Act for the reasons discussed in the Summary of Factors Affecting the 15 Species Proposed for Listing section (below). Because these 4 plant species occur within 4 of the ecosystems identified in this proposed rule, and share common threats with the other 11 species proposed for listing under the Act, we have included them in this proposed rule to provide them with protection under the Act in an expeditious manner.

We are also proposing to list four other plant species (*Bidens hillebrandiana* ssp. *hillebrandiana, Cyrtandra nanawaleensis, Pittosporum hawaiiense,* and *Pritchardia lanigera*) that occur on Hawaii Island. We have

determined that these four Hawaii Island plant species warrant listing under the Act for the reasons discussed in the Summary of Factors Affecting the 15 Species Proposed for Listing section (below). Because these 4 plant species occur within 7 of the ecosystems identified in this proposed rule, and share common threats with the other 11 species proposed for listing under the Act, we have included them in this proposed rule to provide them with protection under the Act in an expeditious manner.

We are proposing critical habitat for two endangered plant species, *Mezoneuron kavaiense* (currently listed as *Mezoneuron kavaiense* but listed in error as *Caesalpinia kavaiense* in 50 CFR 17.12, see taxonomic change discussion below) (51 FR 24672; July 8, 1986) and *Isodendrion pyrifolium* (59 FR 10305, March 4, 1994; 68 FR 39624, July 2, 2003) for which critical habitat has not been previously designated on the island of Hawaii. We are also proposing critical habitat for *Bidens microthia* ssp. *ctenophylla,* a candidate species proposed for listing in this rule (76 FR 66370; October 26, 2011).

Proposed Taxonomic Change Since Listing for One Plant Species

We listed *Mezoneuron kavaiense* as an endangered species in 1986 (51 FR 24672; July 8, 1986), based on the taxonomic treatment of Hillebrand (1888, pp. 110–111). Following the reduction of *Mezoneuron* to *Caesalpinia* by Hattink (1974, p. 5), Geesink *et al.* (1990, pp. 646–647) changed the name to *Caesalpinia kavaiensis.* In 1989, the List of Endangered and Threatened Plants was revised to identify the listed entity as *Caesalpinia kavaiense.* Recent phylogenetic studies support separation of *Mezoneuron* from *Caesalpinia* (Bruneau *et al.* 2008, p. 710). The recognized scientific name for this species is *Mezoneuron kavaiense* (Wagner *et al.* 2012, p. 37). The range of the species between the time of listing and now has not changed. Therefore, we propose to recognize the listed species as *Mezoneuron kavaiense.*

Critical Habitat Unit Map Corrections

Critical habitat was designated for *Cyanea shipmanii, Phyllostegia racemosa, Phyllostegia velutina,* and *Plantago hawaiensis* in 2003 (68 FR 39624; July 2, 2003). In this proposed rule, we are correcting critical habitat unit maps published in 50 CFR 17.99(k)(1) for these four species to accurately reflect their designated critical habitat units. We are amending 50 CFR 17.99(k)(1) by removing four maps (Map 97, Unit 30—*Cyanea stictophylla*—d; Map 100, Unit 30—*Phyllostegia hawaiiensis*—c; Map 101, Unit 30—*Phyllostegia racemosa*—c; and Map 102, Unit 30—*Phyllostegia velutina*—b) that are either a duplicate of another unit map or labeled with the incorrect species name. We are replacing these four maps, using the same map numbers, with correctly labeled maps that accurately represent the geographic location of each species' critical habitat unit.

An Ecosystem-Based Approach to Listing 15 Species on Hawaii Island

On the island of Hawaii, as on most of the Hawaiian Islands, native species that occur in the same habitat types (ecosystems) depend on many of the same biological features and the successful functioning of that ecosystem to survive. We have therefore organized the species addressed in this proposed rule by common ecosystem. Although the listing determination for each species is analyzed separately, we have organized the individual analysis for each species within the context of the broader ecosystem in which it occurs to avoid redundancy. In addition, native species that share ecosystems often face a suite of common factors that may be a threat to them, and ameliorating or eliminating these threats for each individual species often requires the exact same management actions in the exact same areas. Effective management of these threats often requires implementation of conservation actions at the ecosystem scale to enhance or restore critical ecological processes and provide for long-term viability of those species in their native environment. Thus, by taking this approach, we hope not only to organize this proposed rule efficiently, but also to more effectively focus conservation management efforts on the common threats that occur across these ecosystems. Those efforts would facilitate restoration of ecosystem functionality for the recovery of each species, and provide conservation benefits for associated native species, thereby potentially precluding the need to list other species under the Act that occur in these shared ecosystems. In addition, this approach is in accord with the primary stated purpose of the Act (see section 2(b)): ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.''

We propose to list the plants *Bidens hillebrandiana* ssp. *hillebrandiana, B. micrantha* ssp. *ctenophylla, Cyanea marksii, Cyanea tritomantha, Cyrtandra nanawaleensis, Cyrtandra wagneri, Phyllostegia floribunda, Pittosporum hawaiiense, Platydesma remyi, Pritchardia lanigera, Schiedea diffusa* ssp. *macraei, Schidea hawaiiensis,* and *Stenogyne cranwelliae;* and the animals *Drosophila digressa* and *Vetericaris chaceorum,* from Hawaii Island as endangered species. These 15 species (13 plants, 1 anchialine pool shrimp, and 1 picture-wing fly) are found in 10 ecosystem types: anchialine pool, coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff (Table 2).

TABLE 2—SPECIES PROPOSED FOR LISTING ON HAWAII ISLAND AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Species	
	Plants	Animals
Anchialine Pool		*Vetericaris chaceorum.*
Coastal	*Bidens hillebrandiana* ssp. *hillebrandiana*	
Lowland Dry	*Bidens micrantha* ssp. *ctenophylla*	
Lowland Mesic	*Pittosporum hawaiiense*	*Drosophila digressa.*
Lowland Wet	*Pritchardia lanigera* *Cyanea marksii* *Cyanea tritomantha* *Cyrtandra nanawaleensis* *Cyrtandra wagneri* *Phyllostegia floribunda* *Platydesma remyi* *Pritchardia lanigera*	
Montane Dry	*Schiedea hawaiiensis*	

TABLE 2—SPECIES PROPOSED FOR LISTING ON HAWAII ISLAND AND THE ECOSYSTEMS UPON WHICH THEY DEPEND—Continued

Ecosystem	Species	
	Plants	Animals
Montane Mesic	*Phyllostegia floribunda*	*Drosophila digressa.*
	Pittosporum hawaiiense	
Montane Wet	*Cyanea marksii*	*Drosophila digressa.*
	Cyanea tritomantha	
	Phyllostegia floribunda	
	Pittosporum hawaiiense	
	Platydesma remyi	
	Pritchardia lanigera	
	Schiedea diffusa ssp.*macraei*	
	Stenogyne cranwelliae	
Dry Cliff	*Bidens hillebrandiana* ssp. *hillebrandiana*	
Wet Cliff	*Cyanea tritomantha*	
	Pritchardia lanigera	
	Stenogyne cranwelliae	

For each species, we identified and evaluated those factors that threaten the species and that may be common to all of the species at the ecosystem level. For example, the degradation of habitat by nonnative ungulates is considered a threat to 14 of the 15 species proposed for listing, and is likely a threat to many, if not most or all, of the native species within a given ecosystem. We consider such a threat factor to be an ''ecosystem-level threat,'' as each individual species within that ecosystem faces a threat that is essentially identical in terms of the nature of the impact, its severity, its timing, and its scope. Beyond ecosystem-level threats, we further identified and evaluated threat factors that may be unique to certain species, but do not apply to all species under consideration within the same ecosystem. For example, the threat of predation by nonnative wasps is unique to the picture-wing fly in this proposed rule, and is not applicable to any of the other species proposed for listing. We have identified such threat factors, which apply only to certain species within the ecosystems addressed here, as ''species-specific threats.''

An Ecosystem-Based Approach to Determining Primary Constituent Elements of Critical Habitat

Under section 4(a)(3)(A) of the Act, we are required to designate critical habitat to the maximum extent prudent and determinable concurrently with the publication of a final determination that a species is an endangered or threatened species. We are proposing to designate critical habitat concurrently with listing for the plant *Bidens micrantha* ssp. *ctenophylla,* and for two previously listed plant species: *Isodendrion pyrifolium,* which was listed as an endangered species on March 4, 1994 (59 FR 10305), and *Mezoneuron kavaiense,* which was listed as an endangered species on July 8, 1986 (51 FR 24672). These two species are included in this proposed rule because they share proposed occupied and unoccupied critical habitat with *Bidens micrantha* ssp. *ctenophylla.*

In this proposed rule, we propose to designate critical habitat for three species in seven multiple-species critical habitat units. Although critical habitat is identified for each species individually, we have found that the conservation of each depends, at least in part, on the successful functioning of the physical or biological features of the commonly shared ecosystem. Each critical habitat unit identified in this proposed rule contains the physical or biological features essential to the conservation of those individual species that occupy that particular unit at the time of listing, or contains areas essential for the conservation of those species identified that do not presently occupy that particular unit. Where the unit is not occupied by a particular species, we believe it is still essential for the conservation of that species because the designation allows for the expansion of its range and reintroduction of individuals into areas where it occurred historically, and provides area for recovery in the case of stochastic events that otherwise hold the potential to eliminate the species from the one or more locations where it is presently found. Under current conditions, many of these species are so rare in the wild that they are at high risk of extirpation or even extinction from various stochastic events, such as hurricanes or landslides. Therefore, building up resilience and redundancy in these species through the establishment of multiple robust populations is a key component of recovery.

Each of the areas proposed for designation represents critical habitat for multiple species, based upon their shared habitat requirements (*i.e.,* physical or biological features) essential for their conservation. The identification of critical habitat also takes into account any species-specific conservation needs as appropriate.

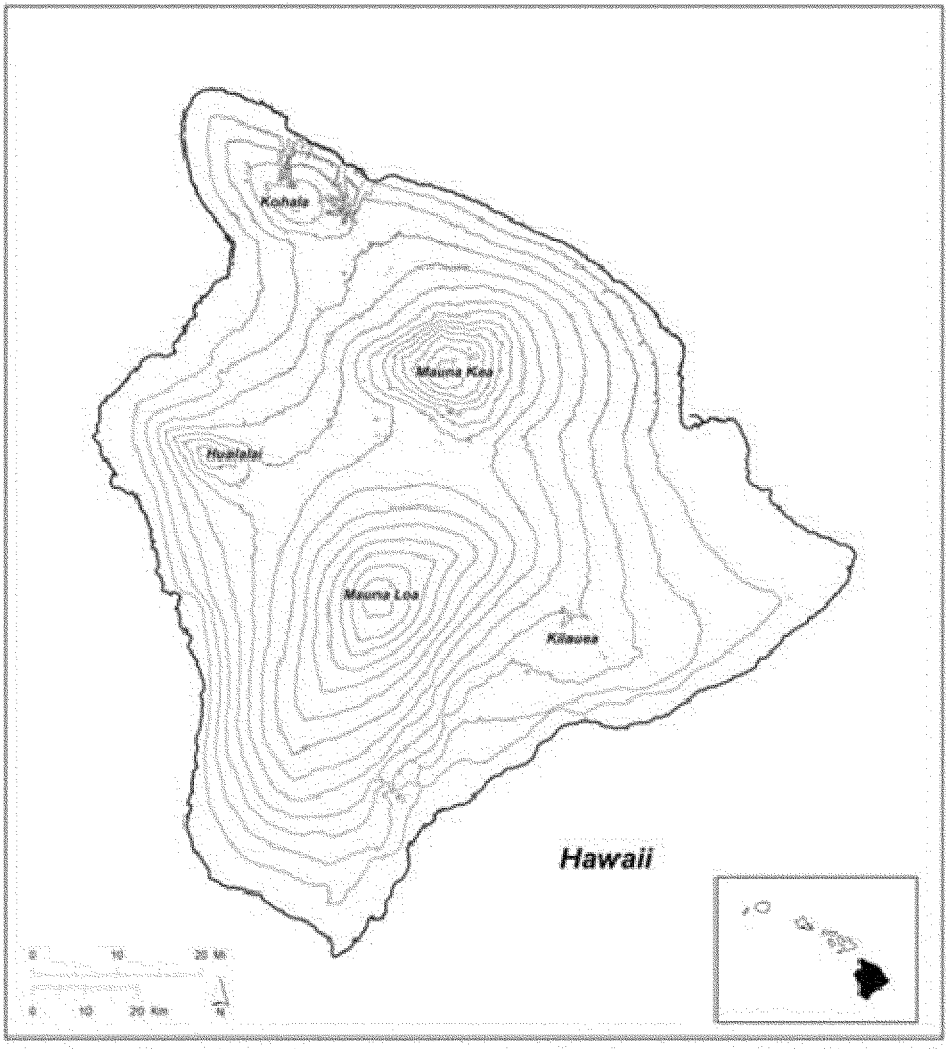
The proposed species *Bidens micrantha* ssp. *ctenophylla,* and the listed species *Isodendrion pyrifolium* and *Mezoneuron kavaiense* co-occur in the same lowland dry ecosystem on the island of Hawaii. These three species (*Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense*) share many of the same physical or biological features (*e.g.,* elevation, annual rainfall, substrate, associated native plant genera), as well as the same threats from development, fire, and nonnative ungulates and plants. However, for the remaining 14 species proposed for listing in this rule, we do not have the analysis necessary to refine the identification of the physical and biological features and delineate the specific areas that contain those features in the appropriate arrangement and quantity or the specific unoccupied areas essential to the species' conservation. As a result, we find that, for the remaining 14 species that we are proposing to list in this rule, the designation of critical habitat is not determinable at this time.

The Island of Hawaii

The island of Hawaii, located southeast of the islands of Maui and Kahoolawe, is the largest, highest, and youngest island of the Hawaiian archipelago (Figure 1). At 4,038 square

(sq) miles (mi) (10,458 sq kilometers (km)) in area, it comprises approximately two-thirds of the land area of the State of Hawaii, giving rise to its common name, the ''Big Island.'' Five large shield volcanoes make up the island of Hawaii: Mauna Kea at 13,796 feet (ft) (4,205 meters (m)) and Kohala at 5,480 ft (1,670 m) are both extinct volcanoes (volcanoes that are not expected to erupt again); Hualalai at 8,271 ft (2,521 m) is dormant (an active volcano that is not erupting, but expected to erupt again); and Mauna Loa at 13,677 ft (4,169 m) and Kilauea at 4,093 ft (1,248 m) are both active (volcanoes that are currently erupting or showing signs of unrest, such as significant new gas emission) (McDonald *et al.* 1990, pp. 345–379; 59 FR 10305, March 4, 1994; USGS 2012, pp. 1–2). Hawaii Island, with its greater mass and higher elevations, has more distinctive climatic zones and ecosystems than can be found elsewhere in the State (Juvik and Juvik 1998, p. 22). The highest and lowest recorded temperatures in the State occur on Hawaii Island (USFWS 1996, p. 6; Wagner *et al.* 1999a, p. 38).

Figure 1. Map of Hawaii Island



The island of Hawaii lies within the trade wind belt. Moisture derived from the Pacific Ocean is carried to the island by north-easterly trade winds. Heavy rains fall when the moisture in clouds makes contact with windward (the direction upwind from the point of reference, usually the more wet side of an island) mountain slopes (Wagner *et al.* 1999a, pp. 38–42). Considerable moisture reaches the leeward (the course in which the wind is blowing, typically the dryer side of an island) slopes of the saddle area between Mauna Loa and Mauna Kea, but dries out rapidly as elevation increases. This orographic (associated with or induced by the presence of mountains) effect reaches an elevation of about 2,000 to 3,000 m (6,500 to 9,850 ft) and tends to go around rather than over the high mountains. Thus, in the leeward saddle area, and high-elevation areas of Mauna Kea and Mauna Loa, dry or arid conditions predominate (USFWS 1996, p. 6; Mitchell *et al.* 2005a, pp. 6–71).

A rain shadow effect, created by Mauna Kea and Mauna Loa, on the leeward side of the island prevents the Kona (west side of the island) coast from receiving precipitation from the predominantly northeasterly trade winds (Wagner *et al.* 1999a, pp. 36–44). However, convection-driven onshore breezes create upslope showers most afternoons, resulting in greater than expected annual rainfall (50 to more than 100 inches (in) (1,270 to more than 2,540 millimeters (m)), which supports

a broad band of mesic forest on portions of leeward Hawaii (Mitchell *et al.* 2005a, pp. 6–71–6–91). Another major source of rainfall is provided by winter (Kona) storms, which develop south of the island, and impact the island when trade winds subside during the winter months. Kawaihae, in south Kohala (on the northwest side of the island), is effectively cut off from the northeasterly tradewinds by the Kohala Mountains, and from southerly and southwesterly winds of winter storms by Mauna Loa and Hualalai. It is the driest place in the main (Hawaii, Kauai, Kahoolawe, Lanai, Molokai, Maui, Niihau, and Oahu) Hawaiian Islands, receiving only about 8 in (200 mm) of rain per year (Wagner *et al.* 1999a, p. 39).

Due to its relatively young age (less than 1 million years old), the island of Hawaii is represented by fewer soil types than the older main Hawaiian Islands. Sizable areas of lava, cinder, and rubble occur in the saddle between Mauna Kea and Mauna Loa, and on recent lava flows originating from Hualalai, Mauna Loa, and Kilauea (Juvik and Juvik 1998, pp. 44–46; Mitchell *et al.* 2005a, pp. 6–71–6–72). Other soil types include: histosols, which are characterized by a thin, well-drained, organic layer and occur on younger lava flows common in the Hilo and Kau areas; andisols, which occur on substrates older than 3,000 years, are characterized by the ability to take up large amounts of phosphorous and are common on the east flank of Mauna Kea and above Hilo; aridosols, which are characterized by horizons with accumulations of carbonates, gypsum, or sodium chloride, and are found in the dry soils of deserts or the dry leeward sides of the island; and mollisols, which are characterized by a distinct dark-colored surface horizon enriched with organic matter, and are found under the grasslands on the dry leeward areas of the island (Gavenda *et al.* 1998, p. 94).

The vegetation on the island of Hawaii continues to experience extreme alterations due to ongoing volcanic activity, past and present land use, and other activities. Land with rich soils was altered by the early Hawaiians and, more recently, converted to agricultural use in the production of sugar, diversified agriculture, and pasture for cattle (*Bos taurus*) ranching. For example, large areas on the eastern slopes of the Kohala Mountains, Mauna Kea, and Mauna Loa were maintained in sugarcane production until the late 1960s (Juvik and Juvik 1998, p. 22). Intentional and inadvertent introduction of alien plant and animal species has also contributed to the reduction in range of native vegetation on the island of Hawaii (throughout this rule, the terms ''alien,'' ''feral,'' ''nonnative,'' and ''introduced'' all refer to species that are not naturally native to the Hawaiian Islands). Currently, most of the native vegetation on the island persists on upper elevation slopes, valleys, and ridges; steep slopes; precipitous cliffs; valley headwalls; and other regions where unsuitable topography has prevented urbanization and agricultural development, or where inaccessibility has limited encroachment by nonnative plant and animal species.

Hawaii Island Ecosystems

There are 12 different ecosystems (anchialine pool, coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, alpine, dry cliff, and wet cliff) recognized on the island of Hawaii. The 15 species proposed for listing occur in 10 of these 12 ecosystems (none of the 15 species are reported in subalpine and alpine ecosystems). The lowland dry ecosystem supports the three species for which critical habitat is proposed. The 10 Hawaii Island ecosystems that support the 15 proposed species are described in the following section; see Table 2 (above) for a list of the species that occur in each ecosystem type.

Anchialine Pools

The anchialine pool ecosystem has been reported from Oahu, Molokai, Maui, Kahoolawe, and Hawaii Island. Anchialine pools are land-locked bodies of water that have indirect underground connections to the sea, contain varying levels of salinity, and show tidal fluctuations in water level. Because all anchialine pools occur within coastal areas, they are technically a part of the coastal ecosystem (see below) with many of the same applicable and overlapping habitat threats. However, in this proposal, we are addressing this unique ecosystem distinctly. Over 80 percent of the State's anchialine pools are found on the island of Hawaii, with a total of approximately 600 to 650 pools distributed over 130 sites along all but the island's northernmost and steeper northeastern shorelines. Characteristic animal species include crustaceans (*e.g.,* shrimps, prawns, amphipods, isopods, etc.), several fish species, molluscs, and other invertebrates adapted to the pools' surface and subterranean habitats (The Nature Conservancy (TNC) 2009, pp. 1–3). Generally, vegetation within the pools consists of various types of algal forms (blue-green, green, red, and golden-brown). The majority of Hawaii's anchialine pools occur in bare or sparsely vegetated lava fields, although some pools occur in areas with various groundcover, shrub, and tree species (Chai 1989, pp. 2–24; Brock 2004, p. 35). The anchialine pool shrimp, *Vetericaris chaceorum,* which is proposed for listing as an endangered species in this rule, occurs in this ecosystem (Kensley and Williams 1986, pp. 417–437).

Coastal

The coastal ecosystem is found on all of the main Hawaiian Islands, with the highest native species diversity occurring in the least populated coastal areas of Kauai, Oahu, Molokai, Maui, Kahoolawe, Hawaii Island, and their associated islets. On Hawaii Island, the coastal ecosystem includes mixed herblands, shrublands, and grasslands, from sea level to 1,000 ft (300 m) in elevation, generally within a narrow zone above the influence of waves to within 330 ft (100 m) inland, sometimes extending farther inland if strong prevailing onshore winds drive sea spray and sand dunes into the lowland zone (TNC 2006a, pp. 1–3). The coastal ecosystem is typically dry, with annual rainfall of less than 20 in (50 cm); however, windward rainfall may be high enough (up to 40 in (100 centimeters (cm)) to support mesic-associated and sometimes wet-associated vegetation (Gagne and Cuddihy 1999, pp. 54–66). Biological diversity is low to moderate in this ecosystem, but may include some specialized plants and animals such as nesting seabirds and the endangered plant *Sesbania tomentosa* (ohai) (TNC 2006a, pp. 1–3). The plant *Bidens hillebrandiana* ssp. *hillebrandiana,* which is proposed for listing as an endangered species in this rule, occurs in this ecosystem on Hawaii Island (Hawaii Biodiversity and Mapping Program Database (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished; HBMP 2010a)).

Lowland Dry

The lowland dry ecosystem includes shrublands and forests generally below 3,300 ft (1,000 m) elevation that receive less than 50 in (130 cm) annual rainfall, or are in otherwise prevailingly dry substrate conditions that range from weathered reddish silty loams to stony clay soils, rocky ledges with very shallow soil, or relatively recent little-weathered lava (Gagne and Cuddihy 1999, p. 67). Areas consisting of predominantly native species in the lowland dry ecosystem are now rare; however, this ecosystem is found on the islands of Kauai, Oahu, Molokai, Lanai, Maui, Kahoolawe and Hawaii, and is

best represented on the leeward sides of the islands (Gagne and Cuddihy 1999, p. 67). On leeward Hawaii Island, this ecosystem occurs on the northwest flank of Hualalai in north Kona and on Mauna Loa in south Kona, but also occurs on the eastern Hawaii Island in Puna and Kau (within and adjacent to Hawaii Volcanoes National Park (HVNP)) (Gagne and Cuddihy 1999, p. 67; TNC 2006b, pp. 1–2). Overall native biological diversity is low to moderate in this ecosystem; however, tree species exhibit a higher rate of diversity and endemism (Pau *et al.* 2009, p. 3,167). The lowland dry ecosystem includes specialized animals and plants such as the Hawaiian owl or pueo (*Asio flammeus sandwichensis*) and *Santalum ellipticum* (iliahialoe or coast sandalwood) (Gagne and Cuddihy 1999, pp. 45–114; TNC 2006b, pp. 1–2). The plant *Bidens micrantha* ssp. *ctenophylla,* which is proposed for listing as an endangered species in this rule, occurs in this ecosystem on Hawaii Island (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished; HBMP 2010b).

Lowland Mesic

The lowland mesic ecosystem includes a variety of grasslands, shrublands, and forests, generally below 3,300 ft (1,000 m) elevation, that receive between 50 and 75 in (130 and 190 cm) annual rainfall (TNC 2006c, pp. 1–2). In the Hawaiian Islands, this ecosystem is found on Oahu, Kauai, Molokai, Lanai, Maui, and Hawaii, on both windward and leeward sides of the islands. On Hawaii Island, this ecosystem is often reduced to remnant occurrences, but can be found in north Kohala, on the southwest and southeast flanks of Mauna Loa and Kilauea (Gagne and Cuddihy 1999, p. 75; TNC 2006c, pp. 1–2). Native biological diversity is high in this system (TNC 2006c, pp. 1–2). The plants, *Pittosporum hawaiiense* and *Pritchardia lanigera,* and the picture-wing fly *Drosophila digressa,* which are proposed for listing as endangered species in this rule, occur in this ecosystem on Hawaii Island (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished; Benitez *et al.* 2008, p. 58; HBMP 2010c; HBMP 2010d).

Lowland Wet

The lowland wet ecosystem is generally found below 3,300 ft (1,000 m) elevation on the windward sides of the main Hawaiian Islands, except Niihau and Kahoolawe (Gagne and Cuddihy 1999, p. 85; TNC 2006d, pp. 1–2). These areas include a variety of wet grasslands, shrublands, and forests that receive greater than 75 in (190 cm) annual precipitation, or are in otherwise wet substrate conditions (TNC 2006d, pp. 1–2). On the island of Hawaii, this system is best developed in north Kohala, on the lower windward flanks of Mauna Kea and Mauna Loa, as well as leeward areas benefiting from convection-driven upslope showers on leeward Mauna Loa and Hualalai (TNC 2006d, pp. 1–2). Native biological diversity is high in this system (TNC 2006d, pp. 1–2). The plants *Cyanea marksii, Cyanea tritomantha, Cyrtandra nanawaleensis, Cyrtandra wagneri, Phyllostegia floribunda, Platydesma remyi,* and *Pritchardia lanigera,* which are proposed for listing as endangered species in this rule, occur in this ecosystem on Hawaii Island (Lorence and Perlman 2007, pp. 357–361; TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished; HBMP 2010c; HBMP 2010e; HBMP 2010f; HBMP 2010g; HBMP 2010h; HBMP 2010i).

Montane Dry

The montane dry ecosystem includes grasslands, shrublands, and forests at elevations between 3,300 and 6,600 ft (1,000 and 2,000 m), that receive less than 50 in (130 cm) of annual precipitation, or are in otherwise dry substrate conditions (TNC 2006e, pp. 1–2). In the Hawaiian Islands, this ecosystem is found on the islands of Maui and Hawaii (Gagne and Cuddihy 1999, pp. 93–97). On Hawaii Island, this ecosystem is best represented on the upper slopes of Hualalai and the Mauna Kea-Mauna Loa saddle area, and includes specialized animals and plants such as the elepaio (*Chasiempis sandwichensis*) and *Isodendrion hosakae* (aupaka) (Gagne and Cuddihy 1999, pp. 45–114; TNC 2006e, pp. 1–2). The plant *Schiedea hawaiiensis,* proposed for listing as an endangered species in this rule, is found in this ecosystem on Hawaii Island (U.S. Army Garrison 2006, pp. 1–55).

Montane Mesic

The montane mesic ecosystem is composed of natural communities (forests and shrublands) found at elevations between 3,300 and 6,600 ft (1,000 and 2,000 m), in areas where annual precipitation is between 50 and 75 in (130 and 190 cm), or areas in otherwise mesic substrate conditions (TNC 2006f, pp. 1–2). This system is found on Kauai, Molokai, Maui, and Hawaii Island (Gagne and Cuddihy 1999, pp. 97–99; TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished). Native biological diversity is moderate (Gagne and Cuddihy 1999, pp. 98–99; TNC 2006f, pp. 1–2). On Hawaii Island, specialized plants and animals such as io or Hawaiian hawk (*Buteo solitarius*) and *Pittosporum hosmeri* (hoawa) occur in the montane mesic ecosystem. The plants *Phyllostegia floribunda* and *Pittosporum hawaiiense,* and the picture-wing fly *Drosophila digressa,* which are proposed for listing as endangered species in this rule, are found in this ecosystem on Hawaii Island (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished; Benitez *et al.* 2008, p. 58; HBMP 2010d; HBMP 2010h).

Montane Wet

The montane wet ecosystem is composed of natural communities (grasslands, shrublands, forests, and bogs) found at elevations between 3,300 and 6,600 ft (1,000 and 2,000 m), in areas where annual precipitation is greater than 75 in (191 cm) (TNC 2006g, pp. 1–2). This system is found on all of the main Hawaiian Islands except Niihau and Kahoolawe, and only the islands of Molokai, Maui, and Hawaii have areas above 4,020 ft (1,225 m) (TNC 2006g, pp. 1–2). On Hawaii Island, the montane wet ecosystem occurs in the Kohala Mountains, in the east flank of Mauna Kea, in the Kau Forest Reserve (FR) on windward Mauna Loa, and on the upper slopes of leeward Mauna Loa (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished). Native biological diversity is moderate to high (TNC 2006g, pp. 1–2). The plants *Cyanea marksii, C. tritomantha, Phyllostegia floribunda, Pittosporum hawaiiense, Platydesma remyi, Pritchardia lanigera, Schiedea diffusa* ssp. *macraei,* and *Stenogyne cranwelliae,* and the picture-wing fly *Drosophila digressa,* which are proposed for listing as endangered species in this rule, occur in this ecosystem on Hawaii Island (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished; Benitez *et al.* 2008, p. 58; HBMP 2010c; HBMP 2010d; HBMP 2010e; HBMP 2010f; HBMP 2010h; HBMP 2010i; HBMP 2010j; HBMP 2010k).

Dry Cliff

The dry cliff ecosystem is composed of vegetation communities occupying steep slopes (greater than 65 degrees) in areas that receive less than 75 in (190 cm) of rainfall annually, or that are in otherwise dry substrate conditions (TNC 2006h, pp. 1–2). This ecosystem is found on all of the main Hawaiian Islands except Niihau, and is best represented along portions of the eroded cliffs of east Kohala on Hawaii Island (TNC 2006h, pp. 1–2). A variety of

shrublands occur within this ecosystem (TNC 2006h, pp. 1–2). Native biological diversity is low to moderate (TNC 2006h, pp. 1–2). The plant *Bidens hillebrandiana* ssp. *hillebrandiana,* which is proposed for listing as an endangered species in this rule, occurs in this ecosystem on Hawaii Island (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished; HBMP 2010a).

Wet Cliff

The wet cliff ecosystem is generally composed of shrublands on near-vertical slopes (greater than 65 degrees) in areas that receive more than 75 in (190 cm) of annual precipitation, or that are in otherwise wet substrate conditions (TNC 2006i, pp. 1–2). This system is found on the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. On the island of Hawaii, this system is found in windward Kohala valleys and on the southeastern slope of Mauna Loa (TNC 2006i, pp. 1–2). Native biological diversity is low to moderate (TNC 2006i, pp. 1–2). The plants *Cyanea tritomantha, Pritchardia lanigera,* and *Stenogyne cranwelliae,* which are proposed for listing as endangered species in this rule, are found in this ecosystem on Hawaii Island (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished; HBMP 2010d; HBMP 2010f; HBMP 2010k).

Description of the 15 Species Proposed for Listing

Below is a brief description of each of the 15 species proposed for listing, presented in alphabetical order by genus. Plants are presented first, followed by animals.

Plants

In order to avoid confusion regarding the number of locations of each species (a location does not necessarily represent a viable population), we use the word ''occurrence'' instead of ''population.'' Each occurrence is composed only of wild (*i.e.,* not propagated and outplanted) individuals.

Bidens hillebrandiana ssp. *hillebrandiana* (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Hawaii (Ganders and Nagata 1999, pp. 275–276). Historically, *B. hillebrandiana* ssp. *hillebrandiana* was known from two locations along the windward Kohala coastline, in the coastal and dry cliff ecosystems, often along rocks just above the ocean (Degener and Wiebke 1926, in litt.; Flynn. 1988, in litt.). Currently, there are two known occurrences of *B. hillebrandiana* ssp. *hillebrandiana* totaling 40 or fewer individuals along the windward Kohala coast, in the coastal and dry cliff ecosystems. There are 30 individuals on the Pololu seacliffs, and 5 to 10 individuals on the seacliffs between Pololu and Honokane Nui (Perlman 1998, in litt.; Perlman 2006, in litt.). Biologists speculate that this species may total as many as 100 individuals with further surveys of potential habitat along the Kohala coast (Mitchell *et al.* 2005b; PEPP 2006, p. 3).

Bidens micrantha ssp. *ctenophylla* (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Hawaii (Ganders and Nagata 1999, pp. 271, 273). Historically, *B. micrantha* ssp. *ctenophylla* was known from the north Kona district, in the lowland dry ecosystem (HBMP 2010b). Currently, this subspecies is restricted to an area of less than 10 sq mi (26 sq km) on the leeward slopes of Hualalai volcano, in the lowland dry ecosystem in 6 occurrences totaling fewer than 1,000 individuals. The largest occurrence is found off Hina Lani Road with over 475 individuals widely dispersed throughout the area (Zimpfer 2011, in litt.). The occurrence at Kealakehe was reported to have been abundant and common in 1992, but by 2010 had declined to low numbers (Whister 2007, pp. 1–18; Bio 2008, in litt.; HBMP 2010b; Whister 2008, pp. 1–11). In addition, there are three individuals in Kaloko–Honokohau National Historical Park (NHP) (Beavers 2010, in litt.), and three occurrences are found within close proximity to each other to the northeast: five individuals in an exclosure at Puuwaawaa Wildlife Sanctuary (HBMP 2010b); a few scattered individuals at Kaupulehu; and a few individuals on private land at Palani Ranch (Whistler 2007, pp. 1–18; Whistler 2008, pp. 1–11). *Bidens micrantha* ssp. *ctenophylla* has also been outplanted within fenced exclosures at Kaloko–Honokohau NHP (49 individuals), Koaia Tree Sanctuary (1 individual), and Puuwaawaa (5 individuals) (Boston 2008, in litt.; HBMP 2010b).

Cyanea marksii (haha), a shrub in the bellflower family (Campanulaceae), is found only on the island of Hawaii. Historically, *C. marksii* was known from the Kona district, in the lowland wet and montane wet ecosystems (Lammers 1999, p. 457; HBMP 2010e). Currently, there are 27 individuals distributed among 3 occurrences in south Kona, in the lowland wet and montane wet ecosystems (PEPP 2007, p. 61). There is an adult and 20 to 30 juveniles (each approximately 1 in (2.54 cm tall)) in a lava tube in the Kona unit of the Hakalau National Wildlife Refuge (NWR) (PEPP 2007, p. 61), one individual in a pit crater in the South Kona FR, and 25 individuals on private land in south Kona (PEPP 2007, p. 61; Bio 2011, pers. comm.). Fruit has been collected from the individuals on private land, and 11 plants have been successfully propagated at the Volcano Rare Plant Facility (VRPF) (PEPP 2007, p. 61; Bio 2011, pers. comm.).

Cyanea tritomantha (aku), a palmlike shrub in the bellflower family (Campanulaceae), is known only from the island of Hawaii (Pratt and Abbott 1997, p. 13; Lammers 2004, p. 89). Historically, this species was known from the windward slopes of Mauna Kea, Mauna Loa, Kilauea, and the Kohala Mountains, in the lowland wet, montane wet, and wet cliff ecosystems (Pratt and Abbott 1997, p. 13). Currently, there are 16 occurrences of *Cyanea tritomantha* totaling fewer than 400 individuals in the lowland wet, montane wet, and wet cliff ecosystems: 10 occurrences (totaling fewer than 240 individuals) in the Kohala Mountains (Perlman 1993, in litt.; Perlman 1995a, in litt.; Perlman and Wood 1996, pp. 1–14; HBMP 2010f; PEPP 2010, p. 60); 2 occurrences (totaling fewer than 75 individuals) in the Laupahoehoe Natural Area Reserve (NAR) (HBMP 2010f; Bio 2011, pers. comm.); 1 occurrence (20 adults and 30 juveniles) at Puu Makaala NAR (Perlman and Bio 2008, in litt.; Agorastos 2010, in litt.; HBMP 2010f; Bio 2011, pers. comm.); 1 occurrence (a few scattered individuals) off Tom's Trail in the Upper Waiakea FR (Perlman and Bio 2008, in litt.); and 2 occurrences (totaling 11 individuals) in Olaa Tract in HVNP (Pratt 2007a, in litt.; Pratt 2008a, in litt). In 2003, over 75 individuals were outplanted in HVNP's Olaa Tract and Small Tract; however, by 2010, less than one third of these individuals remained (Pratt 2011a, in litt.). In addition, a few individuals have been outplanted at Puu Makaala NAR and Upper Waiakea FR (Hawaii Department of Land and Natural Resources (HDLNR) 2006; Belfield 2007, in litt.; Agorastos 2010, in litt.). *Cyanea tritomantha* produces few seeds, and their viability tends to be low (Moriyasu 2009, in litt.)

Cyrtandra nanawaleensis (haiwale), a shrub or small tree in the African violet family (Gesneriaceae), is known only from the island of Hawaii (Wagner and Herbst 2003, p. 29; Wagner *et al.* 2005a—*Flora of the Hawaiian Islands database*). Historically, *C. nanawaleensis* was known only from the Nanawale FR and the adjacent Malama Ki FR in the Puna district, in

the lowland wet ecosystem (St. John 1987, p. 500; Wagner *et al.* 1988, in litt.; HBMP 2010g; Pratt 2011b, in litt.). Currently, *C. nanawaleensis* is known from 4 occurrences with approximately 140 individuals in the lowland wet ecosystem: 2 occurrences in Malama Ki FR totaling 70 individuals (Lau 2011, pers. comm.); 1 occurrence in Keauohana FR (with 56 individuals) (Magnacca 2011a, in litt.); and 1 occurrence in the Halepuaa section of Nanawale FR (with 13 individuals) (Johansen 2012, in litt.; Kobsa 2012, in litt.). Conversion of areas within the Halepuaa section of Nanawale FR to papaya production over the past 25 years is thought to have contributed to the decline of the species in this area (Pratt 2011b, in litt.; Kobsa 2012, in litt.; Pratt 2012, in litt.). Biologists report that *C. nanawaleensis* is in decline throughout its already limited range (Bio 2011, pers. comm.; Kobsa 2012, in litt.).

Cyrtandra wagneri (haiwale), a shrub or small tree in the African violet family (Gesneriaceae), occurs only on the island of Hawaii (Lorence and Perlman 2007, p. 357). Historically, *C. wagneri* was known from a few individuals along the steep banks of the Kaiwilahilahi Stream in the Laupahoehoe NAR, in the lowland wet ecosystem (Perlman *et al.* 1998, in litt.). In 2002, there were 2 known occurrences totaling fewer than 175 individuals in the Laupahoehoe NAR: one occurrence (totaling 150 individuals (50 adults and 100 juveniles)) along the steep banks of the Kilau Stream (Lorence *et al.* 2002, in litt.; Perlman and Perry 2003, in litt.; Lorence and Perlman 2007, p. 359), and a second occurrence (with approximately 10 sterile individuals) along the slopes of the Kaiwilahilahi stream banks (Lorence and Perlman 2007, p. 359). Currently, there are no individuals remaining at Kaiwilahilahi Stream, and the individuals at Kilau Stream appear to be hybridizing with the endangered *Cyrtandra tintinnabula.* Biologists have identified only eight individuals at Kilau Stream that express the true phenotype of *Cyrtandra wagneri,* and only three of these individuals are reproducing successfully (PEPP 2010, p. 102; Bio 2011, pers. comm.).

Phyllostegia floribunda (NCN), a perennial herb in the mint family (Lamiaceae), is found only on the island of Hawaii (Wagner 1999, p. 268; Wagner *et al.* 1999b, p. 815). Historically, *P. floribunda* was reported in the lowland wet, montane mesic, and montane wet ecosystems at scattered sites along the slopes of the Kohala Mountains; southeast through Hamakua, Laupahoehoe NAR, Waiakea FR, and Upper Waiakea FR; and southward into Hilo, HVNP, and Puna. One report exists of the species occurring from north Kona and a few occurrences in south Kona (Cuddihy *et al.* 1982, in litt.; Wagner *et al.* 2005b—*Flora of the Hawaiian Islands database;* Perlman *et al.* 2008, in litt.; HBMP 2010h; Bishop Museum 2011—*Herbarium Database*). Currently, there are 12 known occurrences of *P. floribunda* totaling fewer than 100 individuals, in the lowland wet, montane mesic, and montane wet ecosystems (Bruegmann 1998, in litt.; Giffin 2009, in litt.; HBMP 2010h): 2 occurrences within HVNP, at Kamoamoa (1 individual) (HBMP 2010h) and near Napau Crater (4 individuals) (Pratt 2005, in litt.; Pratt 2007b, in litt.; HBMP 2010h); 1 occurrence behind the Volcano solid waste transfer station (10 to 50 individuals) (Flynn 1984, in litt.; Perlman and Wood 1993–*Hawaii Plant Conservation Maps database;* Pratt 2007b, in litt.; HBMP 2010h); 1 occurrence (with an unknown number individuals) in the Wao Kele O Puna NAR (HBMP 2010h); at least 1 occurrence each (with a few individuals each) in the Puu Makaala NAR, Waiakea FR, Upper Waiakea FR, and TNC's Kona Hema Preserve (PR) (Perry 2006, in litt.; Perlman 2007, in litt.; Giffin 2009, in litt.; PEPP 2008, pp. 106–107; Perlman *et al.* 2008, in litt.; Pratt 2008a, in litt.; Pratt 2008b, in litt.; Agorastos 2010, in litt.); 2 occurrences (each with an unknown number of individuals) from the South Kona FR; 1 occurrence (one individual) in the Kipahoehoe NAR; and, 1 occurrence (with an unknown number of individuals) in the Lapauhoehoe NAR (Moriyasu 2009, in litt.; HBMP 2010h; Agorastos 2010, in litt.). Since 2003, over 400 individuals have been outplanted at HVNP, Waiakea FR, Puu Makaala NAR, Honomalino in TNC's Kona Hema PR, and Kipahoehoe NAR (Bruegmann 2006, in litt.; HDLNR 2006, p. 38; Tangalin 2006, in litt.; Belfield 2007, in litt.; Pratt 2007b, in litt.; VRPF 2008, in litt.; VRPF 2010, in litt.; Bio 2008, in litt.; Agorastos 2010, in litt.). However, for reasons unknown, approximately 90 percent of the outplantings experience high seedling mortality (Pratt 2007b, in litt.; Van DeMark *et al.* 2010, pp. 24–43).

Pittosporum hawaiiense (hoawa, haawa), a small tree in the pittosporum family (Pittosporaceae), is known only from the island of Hawaii (Wagner *et al.* 1999c, p. 1,044). Historically, *P. hawaiiense* was known from the leeward side of the island, from the Kohala Mountains south to Kau, in the lowland mesic, montane mesic, and montane wet ecosystems (Wagner *et al.*1999c, p. 1,044). Currently, there are 14 known occurrences totaling fewer than 75 individuals, from HVNP to Puu O Umi NAR, and south Kona, in the lowland mesic, montane mesic, and montane wet ecosystems: 1 occurrence in Puu O Umi NAR (several scattered individuals) (Perlman 1995b, in litt.); 1 occurrence (with a least one individual) in TNC's Kona Hema PR (Oppenheimer *et al.* 1998, in litt.); 1 occurrence (with several individuals) at Kukuiopae (Perlman and Perry 2002, in litt.); 1 occurrence (with a few individuals) in the Manuka NAR (Perry 2011, in litt.); 8 occurrences (totaling fewer than 58 individuals) scattered within the Kahuku unit of HVNP; 1 occurrence in the Olaa FR (at least one individual), just adjacent to the Olaa Tract in HVNP; and 1 occurrence (with fewer than 6 individuals) at the Volcano solid waste transfer station (Wood and Perlman 1991, in litt.; McDaniel 2011a, in litt.; McDaniel 2011b, in litt.; Pratt 2011d, in litt.). Biologists have observed very low regeneration in these occurrences, which is believed to be caused, in part, by rat predation on the seeds (Bio 2011, pers. comm.).

Platydesma remyi (NCN), a shrub or shrubby tree in the rue family (Rutaceae), occurs only on the island of Hawaii (Stone *et al.* 1999, p. 1210; USFWS 2010, pp. 4-66–4-67, A–11, A–74). Historically, *P. remyi* was known from a few scattered individuals on the windward slopes of the Kohala Mountains and several small populations on the windward slopes of Mauna Kea, in the lowland wet and montane wet ecosystems (Stone *et al.* 1999, p. 1210; HBMP 2010i). Currently, *P. remyi* is known from 8 occurrences totaling fewer than 40 individuals, all of which are found in the Laupahoehoe NAR or in closely surrounding areas, in the lowland wet and montane wet ecosystems: along the banks of Kaiwilahilahi Stream in the Laupahoehoe NAR (unknown number of individuals) (Perlman and Perry 2001, in litt.; Bio 2008, in litt.; HBMP 2010i); near the Spencer Hunter Trail in the Laupahoehoe NAR (fewer than 17 individuals) (PEPP 2010, p. 102); the central part of the Laupahoehoe NAR (5 to 6 scattered individuals) (HBMP 2010i); near Kilau (1 to 3 individuals) and Pahale (1 to 3 individuals) Streams in Laupahoehoe NAR; southeastern region of Laupahoehoe NAR (1 individual); Hakalau unit of the Hakalau NWR (1 individual) (USFWS 2010, p. 4-74–4-75); and the Humuula region of the Hilo FR (2 individuals) (Bruegmann

1998, in litt.; Bio 2008, in litt.; PEPP 2008, p. 107; HBMP 2010i). According to field biologists, this species appears to be declining with no regeneration believed to be caused, in part, by rat predation on the seeds (Bio 2011, pers. comm.). In 2009, 29 individuals of *P. remyi* were outplanted in Laupahoehoe NAR (Bio 2008, in litt.). Their current status is unknown.

Pritchardia lanigera (loulu), a medium-sized tree in the palm family (Arecaceae), is found only on the island of Hawaii (Read and Hodel 1999, p. 1,371; Hodel 2007, pp. 10, 24–25). Historically, *P. lanigera* was known from the Kohala Mountains, Hamakua district, windward slopes of Mauna Kea, and southern slopes of Mauna Loa, in the lowland mesic, lowland wet, montane wet, and wet cliff ecosystems (Read and Hodel 1999, p. 1,371; HBMP 2010c). Currently, *P. lanigera* is known from 2 occurrences totaling fewer than 220 individuals scattered along the windward side of the Kohala Mountains, in the lowland mesic, lowland wet, montane wet, and wet cliff ecosystems. Approximately 100 to 200 individuals are scattered over 1 sq mi (3 sq km) in Waimanu Valley and surrounding areas (Wood 1995, in litt.; Perlman and Wood 1996, p. 6; Wood 1998, in litt.; Perlman *et al.* 2004, in litt.; HBMP 2010c). There are at least five individuals in the back rim of Alakahi Gulch in Waipio Valley (HBMP 2010c). According to field biologists, pollination rates appear to be low for this species, and the absence of seedlings and juveniles at known locations suggests that regeneration is not occurring believed to be caused, in part, by beetle and rat predation on the fruits and seeds (Bio 2011, pers. comm.).

Schiedea diffusa ssp. *macraei* (NCN), a perennial climbing herb in the pink family (Caryophyllaceae), is reported only from the island of Hawaii (Wagner *et al.* 2005c—*Flowering Plants of the Hawaiian Islands database;* Wagner *et al.* 2005d, p. 106). Historically, *S. diffusa* ssp. *macraei* was known from the Kohala Mountains, the windward slopes of Mauna Loa, and the Olaa Tract of HVNP, in the montane wet ecosystem (Perlman *et al.* 2001, in litt.; Wagner *et al.* 2005d, p. 106; HBMP 2010j). Currently, there is one individual of *S. diffusa* ssp. *macraei* on the slopes of Eke in the Kohala Mountains, in the montane wet ecosystem (Wagner *et al.* 2005d, p. 106; Bio 2011, pers. comm.).

Schiedea hawaiiensis (NCN), a perennial herb or subshrub in the pink family (Caryophyllaceae), is known only from the island of Hawaii (Wagner *et al.* 2005d, pp. 92–96). Historically, *S. hawaiiensis* was known from a single collection by Hillebrand (1888, p. 33) from the Waimea region, in the montane dry ecosystem (Wagner *et al.* 2005d, pp. 92–96). Currently, *S. hawaiiensis* is known from 25 to 40 individuals on the U.S. Army's Pohakuloa Training Area (PTA) in the montane dry ecosystem, in the saddle area between Moana Loa and Mauna Kea (Gon III and Tierney 1996 in Wagner *et al.* 2005d, p. 92; Wagner *et al.* 2005d, p. 92; Evans 2011, in litt.). In addition, there are over 150 individuals outplanted at PTA (Kipuka Alala and Kalawamauna), Puu Huluhulu, Puu Waawaa, and Kipuka Oweowe (Evans 2011, in litt.).

Stenogyne cranwelliae (NCN), a vine in the mint family (Lamiaceae), is known only from the island of Hawaii. Historically, *S. cranwelliae* was known from the Kohala Mountains, in the montane wet and wet cliff ecosystems (Weller and Sakai 1999, p. 837). Currently, there are 6 occurrences of *S. cranwelliae* totaling fewer than 160 individuals in the Kohala Mountains, in the montane wet and wet cliff ecosystems: roughly 1.5 sq mi (2.5 sq km) around the border between the Puu O Umi NAR and Kohala FR, near streams and bogs (ranging from 3 to 100 scattered individuals) (Perlman and Wood 1996, pp. 1–14; HBMP 2010k); Opaeloa, in the Puu O Umi NAR (3 individuals) (Perlman and Wood 1996, pp. 1–14; HBMP 2010k); Puukapu, in the Puu O Umi NAR (6-by 6-ft (2-by 2-m) ''patch'' of individuals) (HBMP 2010k); the rim of Kawainui Gulch (1 individual) (Perlman and Wood 1996, pp. 1–14; HBMP 2010k); along Kohakohau Stream, in the Puu O Umi NAR (a few individuals) (Perlman and Wood 1996, pp. 1–14; HBMP 2010k); and Waimanu Bog Unit in the Puu O Umi NAR (a ''patch'' of individuals) (Agorastos 2010, in litt.)

Animals

Drosophila digressa (picture-wing fly), a member of the family Drosophilidae, was described in 1968 by Hardy and Kaneshiro and is found only on the island of Hawaii (Hardy and Kaneshiro 1968, pp. 180–1882; Carson 1986, p. 3–9). This species is small, with adults ranging in size from 0.15 to 0.19 in (4.0 to 5.0 mm) in length. Adults are brownish yellow in color and have yellow-colored legs and hyaline (shiny-clear) wings with prominent brown spots. Breeding generally occurs year round, but egg laying and larval development increase following the rainy season as the availability of decaying matter, which picture-wing flies feed on, increases in response to heavy rains. In contrast to most continental Drosophilidae, many endemic Hawaiian species are highly host-plant-specific (Magnacca *et al.* 2008, p. 1). *Drosophila digressa* relies solely on the decaying stems of *Charpentiera* spp. for oviposition (to deposit or lay eggs) and larval substrate (Magnacca *et al.* 2008, pp. 11, 13). The larvae complete development in the decaying tissue before dropping to the soil to pupate (Montgomery 1975, pp. 65–103; Spieth 1986, p. 105). Pupae develop into adults in approximately 1 month, and adults sexually mature 1 month later. Adults live for 1 to 2 months. The adult flies are generalist microbivores (microbe eating) and feed upon a variety of decomposing plant material. *Drosophila digressa* occurs in elevations ranging from approximately 2,000 to 4,500 ft (610 to 1,370 m), in the lowland mesic, montane mesic, and montane wet ecosystems (Magnacca 2011a, pers. comm.). Historically, *Drosophila digressa* was known from five sites: Moanuiahea pit crater on Hualalai, Manuka FR, Kipuka 9 and Bird Park in HVNP, and Olaa FR (Montgomery 1975, p. 98; Magnacca 2006, pers. comm.; HBMP 2010d; Magnacca 2011b, in litt.). Currently, *D. digressa* is known from only two locations, one population in the Manuka NAR within the Manuka FR, in the lowland mesic and montane mesic ecosystems, and a second population in the Olaa FR in the montane wet ecosystem (Magnacca 2011b, in litt.). The current number of individuals at each of these locations is unknown (Magnacca 2011b, in litt.).

Vetericaris chaceorum (anchialine pool shrimp) is a member of the family Procarididae and is considered one of the most primitive shrimp species in the world (Kensley and Williams 1986, pp. 428–429). Known only from the island of Hawaii, the species is one of seven known species of hypogeal (underground) shrimp found in the Hawaiian Islands that occur in anchialine pools (Brock 2004, p. 6). Anchialine pool habitats can be distinguished from similar systems (*i.e.,* tidal pools) in that they are land-locked with no surface connections to water sources either saline or fresh, but have subterranean hydrologic connections where water flows through cracks and crevices, and yet remain tidally influenced (Holthuis 1973, p. 3; Stock 1986, p. 91). Anchialine habitats are ecologically distinct and unique, and while widely distributed throughout the world, they only occur in the United States in the Hawaiian Islands (Brock 2004, p. i, 2, and 12). In the Hawaiian Islands, there are estimated to be 600 to 700 anchialine pools, with the majority

occurring on the island of Hawaii (Brock 2004, p. i).

Relatively large in size for a hypogeal shrimp species, adult *Vetericaris chaceorum* measure approximately 2.0 in (5.0 cm) in total body length, excluding the primary antennae, which are approximately the same length as the adult's body length (Kensley and Williams 1986, p. 419). The species lacks large chelapeds (claws) (Kensley and Williams 1986, p. 426), which are a key diagnostic characteristic of all other known shrimp species. *Vetericaris chaceorum* is largely devoid of pigment and lacks eyes, although eyestalks are present (Kensley and Williams 1986, p. 419).

Observations of *V. chaceorum* indicate the species is a strong swimmer and propels its body forward in an upright manner with its appendages held in a basket formation below the body. Forward movement is produced by a rhythmic movement of the thoracic and abdominal appendages, and during capture of some specimens, *V. chaceorum* escape tactics included only forward movement and a notable lack of tail flicking, which would allow backward movement and which is common to other shrimp species (Kensley and Williams 1986, p. 426). No response was observed when the species was exposed to light (Kensley and Williams 1986, p. 418).

The feeding habits of *V. chaceorum* are unknown, although Kensley and Williams (1986, p. 426) reported that the gut contents of a captured specimen included large quantities of an orange-colored oil and fragments of other crustaceans (including *Procaris hawaiana,* a co-occurring anchialine pool shrimp), indicating that the species may be carnivorous upon its associated anchialine pool shrimp species. In general, hypogeal shrimp occur within both the illuminated part of their anchialine pool habitat as well as within the cracks and crevices in the water table below the surface (Brock 2004, p. 6), and relative abundance of some Hawaii species is directly tied to food abundance (Brock 2004, p. 10). Furthermore, studies indicate that the lighted environment of anchialine pools offers refugia of high benthic productivity, resulting in higher population levels for the shrimp compared to the surrounding interstitial spaces occupied by these species, albeit in lower numbers (Brock 2004, p. 10).

Although over 400 anchialine pool habitats have been surveyed on the island of Hawaii, *Vetericaris chaceorum* has to date only been documented from Lua O Palahemo, which is a submerged lava tube located on the southernmost point of Hawaii Island in an area known as Ka Lae (South Point) (Kensley and Williams 1986, pp. 417–418; Brock 2004, p. 2; HBMP 2010). Age estimates for Lua O Palahemo range from as young as 11,780 years to a maximum of age of 25,000 years based upon radio carbon data (Kensley and Williams 1986, pp. 417–418). Brock (2004, p. 18) states this lava tube is the second most important anchialine pool habitat in the State because of its unique connection to the ocean, the vertical size (*i.e.,* depth), and the presence of a total of five different species including *Halocaridina palahemo, Halocaridina rubra, Procaris hawaiiana, Calliasmata pholidota,* and *Vetericaris chaceorum.*

Lua O Palahemo itself is actually a naturally occurring opening (surface collapse) into a large lava tube below. The opening measures approximately 33 ft (10 m) in diameter and is directly exposed to sunlight. Unlike most anchialine pools in the Hawaiian Islands, which have depths less than 4.9 ft (1.5 m) (Brock 2004, p. 3), Lua O Palahemo's deep pool includes a deep shaft with vertical sides extending downward about 46 ft (14 m) into the lava tube below, which then splits off into two directions, both ending in blockages (Holthuis 1974, p.11; Kensley and Williams 1986, p. 418). The tube runs generally north and south, extending northward for 282 ft (86 m) and southward for 718 ft (219 m) to a depth of 108 ft (33 m) below sea level (Kensley and Williams 1986, p. 418).

We have information pertaining to three distinct survey efforts at Lua O Palahemo. The first survey occurred in 1972–1973 (Holthius 1973, pp. 10–12; 22; Maciolek and Brock 1974, pp. 1–2; 17; 50); a second survey in May 1985 (Kensley and Williams 1986, pp. 417–426; Bozanic 2004, p. 1); and a third survey in July 2010 (Wada 2012, pers. comm.). Descriptions of each survey follow and are considered relevant because each survey sheds light on the decline of habitat available to *Vetericaris chaceorum.*

Lua O Palahemo was first formally surveyed as anchialine pool habitat sometime between 1972–1973 (Maciolek and Brock 1974, pp. 1–2; 17). During this survey, which did not include SCUBA methods, the following physical characteristics and measurements of the pond were noted: salinity ranged between 18 to 22 parts per thousand (ppt); the pool depth was recorded as deep; the pool bottom was described as rocky with a large accumulation of sediment; and surrounding flora was noted as minimal, but included vines and succulents, grasses, and small trees or shrubs (Maciolek and Brock 1974, p. 50). According to Maciolek and Brock's (1974, pp. 17, 50) report, hypogeal shrimp species found at Lua O Palahemo at that time included *Procaris hawaiiana* (then, only the second known location), *Calliasmata pholidota, Antecaridina lauensis,* and *Halocaridina rubra.* Maciolek and Brock (1974, pp. 50) reported that Lua O Palahemo was inhabited by the greatest concentration of *H. rubra* ever observed up to that time period (1972–1973), and indeed, Holthius (1973, p. 22) reported that the density of *H. rubra* swimming in a swarm near the pool surface was sufficiently high enough to cause the water to appear blood red in color. Although neither scientific article written about this survey explicitly describes water clarity at Lua O Palahemo, both imply that the water was clear enough to see the various shrimp species from distances of several meters within the pool and the area directly below the pool.

In May of 1985, a second, more thorough survey of Lua O Palahemo was conducted by local biologists, a world-renowned cave diver, and hypogeal shrimp specialists (Kensley and Williams 1986, pp. 417–426; Bozanic 2004, p. 1–2). Because this survey included SCUBA methods, the full extent of the submerged system was explored, and physical characteristics, dimensions, and water measurements were completed for the pool as well as the water column directly below and the main lava tube. Pool surface measurements revealed a temperature of 75.2 degrees Fahrenheit (24 degrees Centigrade), salinity of 20 ppt, and dissolved oxygen of 6.0 parts per million (ppm) (Kensley and Williams 1986, p. 418). At a depth of 108 ft (33 m) (or 590 ft (180 m) from the pool surface) in the southward or seaward portion of the submerged lava tube where *Vetericaris chaceorum* was discovered and observed, measurements revealed a salinity of 30 ppt and dissolved oxygen at 0.3 ppm (Kensley and Williams 1986, p. 418).

The 1985 survey team completed a total of three dives within the Lua o Palahemo lava tube during their 1985 exploration of the site (Kensley and Williams 1986, pp. 417, 426). During those dives, researchers made five observations of *Vetericaris chaceorum* in total darkness at a depth of 108 ft (33 m) and 590 ft (180 m) from the opening, collecting two specimens. Kensley and Williams (1986, p. 418) noted, however, that the area surveyed directly beneath the surface of the pool contained the highest density of animals (*e.g.,* shrimps and crustaceans). In addition to the

discovery of *V. chaceorum,* a second new species was discovered, *Halocaridina palahemo,* and two known species were observed including *Procaris hawaiiana* and *Calliasmata pholidota. Calliasmata pholidota* was collected within the water column below the pool at a depth of 15 m (49 ft), and its population was estimated at less than 100. Both *P. hawaiiana,* numbering in the thousands and *H. palahemo,* numbering in the tens of thousands of individuals, were collected in the water column near the opening into the lava tube below the pool surface (Kensley and Williams 1986, p. 418). During their 1985 survey, Kensley and Williams (1986 entire) did not observe nonnative fish species within Lua O Palahemo.

Regarding water clarity and observation of sedimentation within Lua O Palahemo during the 1985 survey, both Kensley and Williams (1986, pp. 417–418) and Bozanic (2004, p. 1), noted that water clarity was good with visibility as great as 66 ft (20 m) during initial entry into the water column and the lateral lava tube below. However, during the exit phase of the dive, visibility diminished to a few centimeters as exhalation bubbles from the divers' expired air tanks disturbed sediment accumulated upon the ceiling of the lava tube and clouded the water. At the bottom of the water column below the pool and within both stretches of the lava tube, all surfaces were observed to be covered in sediment, which sometimes reached a depth of 3.3 ft (1 m). The survey team described the large mound located at the bottom of the water column below the pool opening as comprised of rock and silty sediment reaching at a total height of approximately 50 ft (15 m) (Kensley and Williams 1986, pp. 417–418; Bozanic 2004, p. 1). Foreign objects discovered and removed from the mound included bicycles, barbed wire, random trash, and assorted cables and lines (presumably fishing line) (Bozanic 2004, p. 1).

In July 2010, a team comprised of Service and Hawaii State Division of Aquatic Resources (DAR) biologists conducted a third survey of Lua O Palahemo. The survey team used snorkeling techniques and an underwater video camera as well as numerous trapping devices to take measurements, survey for shrimp species, and record data within the underwater site (Wada 2010, in litt., pp. 1–2). As noted during a brief 2005 U.S. Fish and Wildlife Service visit to the site, the team described the immediate area surrounding the depression above the pool opening as greatly eroded, creating a large soil funnel with the pool opening in the center of the funnel (Wada 2010, in litt., p. 1). The area was also described as dry and largely barren with a few clumps of nonnative grass species scattered throughout. The water immediately within the pool area was described as extremely low in clarity with visibility estimated at 3 in (8 cm) (Wada 2010, in litt., p. 1).

Snorkeling within the pool revealed that a partial collapse of the pool walls may have occurred in the past few years as the team experienced difficulty in locating an opening large enough for a person to explore. Wada (2010, in litt. p. 1) hypothesized that the collapse of the lava tube rock walls above the pool followed an earthquake of 6.7 magnitude (USGS 2010, in litt.) in October 2006 on Hawaii Island. Despite the blockages encountered, an underwater video camera was successfully deployed through a small opening and dropped to a depth of just over 100 ft (30 m) (Wada 2010, in litt., p. 1). The video footage showed a continuous thick cloud of sediment and detritus through the entire depth of the water column (Wada 2010, in litt., p. 1). After viewing photographs taken in 2005 of the pool and surrounding area at Lua O Palahemo, anchialine pool expert, Richard Brock (Brock 2012, pers. comm.), stated that a very obvious increase of sedimentation was occurring at the site and within the pool compared to conditions at the pool during the 1985 survey and other visits in the 1980s.

Of the five species of hypogeal shrimp known from Lua O Palahemo, only *Procaris hawaiiana* was observed. One specimen was captured within the pool and the underwater video camera captured footage of seven individuals, which were tentatively identified as *P. hawaiiana,* based upon their bright orange coloration (Wada 2010, in litt., p. 1). The survey team used standard and accepted methods while attempting to capture and survey for shrimp species. Specific trap types used included soft traps (*i.e.,* traps using netting), bottle traps, cylindrical traps, and specially designed traps devised by State DAR staff. Within the water column below the pool opening, trapping measures were employed at depths of 10 ft (3.04 m), 15 ft (4.57 m), 25 ft (7.62 m), 50 ft (15.24 m), and 100 ft (30.48 m) (Wada 2010, in litt., p. 1). According to the same report, no nonnative fish were observed. Hypogeal shrimp species known from Lua O Palahemo and notably absent during the survey included *Calliasmata pholidota, Antecaridina lauensis, Halocaridina rubra,* and *Vetericaris chaceorum.* Regarding the latter species, it is important to note that the survey team did not survey as deeply (108 ft (33 m) below sea level or 590 ft (180 m)) from the pool surface) as was done during 1985 survey, in which the species was first and last observed. Accordingly, it is uncertain whether surveys conducted after the 1985 effort would have detected *V. chaceorum,* given the different methods that were used. For the other species, based on what is known about the species' behavior, their presence would have been expected at the depths and locations where trapping was conducted; however, these species were notably absent during this survey.

In June 2012, Service biologists briefly revisited Lua O Palahemo to assess current conditions there (Richardson 2012, in litt., pp. 1–2). During this visit, we took measurements of the depression surrounding the opening to the pool. Roughly oval in shape, the depression measured approximately 195 ft (65 m) wide by 210 ft (70 m) long. We noted that there is no outlet for runoff from rain out of the depression other than into the anchialine pool itself. A total of 7 distinct off-road vehicle tracks into the depression surrounding the pool were counted and photographed. Snorkeling within the pool revealed no hypogeal shrimp species, although a common marine species, *Palaemonella burnsi,* was abundant and numbered approximately 1,000 individuals. No nonnative fish were observed; however, we noted approximately 10 mature and young native Hawaiian gobies. Gobies (family Gobiidae) are distinguished by their fused pelvic fins that form a disc-shaped sucker. Hawaii has several indigenous goby species, including the species observed at Lua O Palahemo, *Bathygobius coalitus* (Smith 2012, in litt.). Visibility in the water was estimated at approximately 4 ft (1.2 m), and no trash or debris was seen in the pool other than a large amount of grass seeds floating on the surface of the water. We did not dive deep enough to ascertain the condition of the pool bottom, however all submerged rock surfaces were covered in a 1-in (2.54-cm) thick layer of algae and mud, and the water smelled strongly of soil, similar to a smell encountered in wet caves (Richardson 2012, in litt., pp. 1–2). Lastly, the sign previously posted above the opening of the pool, and which included a warning and fine against disturbance of the site, was gone.

Our best understanding of hypogeal shrimp population dynamics in Hawaii and elsewhere is based upon studies of the comparatively common species, *Halocaridina rubra.* Studies and

anecdotal observations of that species and others indicate shrimp density may be very low in the water table (*i.e.,* greater than 1 individual per 3,500 cubic ft (approximately 100 cubic m)), compared to the anchialine pool areas, where abundance may reach many hundreds per square meter of bottom (Brock and Bailey-Brock 1998, p. 65; Brock 2004, p. 10).

Because of the ability of hypogeal shrimp species to inhabit the interstitial and crevicular spaces in the water table bedrock surrounding anchialine pools, it is very difficult to estimate population size of a given species within a given area (Brock 2004, pp. 10–11). Therefore, based upon these considerations and the fact that a total of five individuals have been observed on three occasions during one survey in 1985, we are unable to estimate the population size of *Vetericaris chaceorum.* Furthermore, the methods used and depths explored between the three surveys (in 1973, 1985, and 2010) of Lua O Palahemo were not sufficiently comparable for us to determine that there has been a decline in *V. chaceorum* abundance.

Brock (2004, p. 7) estimated that there are likely no more than a couple of dozen individuals of this species remaining in this pool; however, he provided no basis for this statement. Therefore, it is our opinion that *Vetericaris chaceorum* is extant, albeit in low numbers, and that additional surveys using SCUBA methods and conducted at the same depths explored in 1985 are warranted. Despite the lack of information regarding *V. chaceorum* biology and population demographics, the Service believes information from the three surveys presents compelling evidence of habitat decline at Lua O Palahemo. The other four hypogeal shrimp species formerly known from the site are either entirely absent or present in very low numbers, and at least three of those species are considered likely food sources for *V. chaceorum.* It is our opinion that these shrimp species have experienced drastic population decline due to degradation of the water quality at Lua O Palahemo. This degradation is a result of excessive siltation and sedimentation of the anchialine pool system at Lua O Palahemo, combined with the diminished ability of the system to flush, which Brock (2004, pp. 11, 35–36) described as necessary for a functioning anchialine pool system.

Summary of Factors Affecting the 15 Species Proposed for Listing

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In considering what factors might constitute threats to a species; we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to warrant listing the species under the Act. The information must include evidence sufficient to show that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

If we determine that the level of threat posed to a species by one or more of the five listing factors is such that the species meets the definition of either endangered or threatened under section 3 of the Act, that species may then be proposed for listing. The Act defines an endangered species as ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The threats to each of the individual 15 species proposed for listing in this document are summarized in Table 3, and discussed in detail below.

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Table 3. Summary of primary threats identified for each of the 15 Hawaii Island species.

Species	Ecosystem	Factor A						Factor B	Factor C				Factor D	Factor E
		Agriculture and urban develop-ment	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change	Over-utilization	Disease	Predation/ Herbivory by ungulates	Predation/ Herbivory by other NN verte-brates	Predation/ Herbivory by NN inverte-brates	Inadequate existing regulatory mechanisms	Other species-specific threats
Plants														
Bidens hillebrandiana ssp. *hillebrandiana*	CO, DC		P, G	X		H, RF, L	X			P, G	R		X	LN
Bidens micrantha ssp. *ctenophylla*	LD	X	P, G	X	X	H, DR	X			P, G	R		X	HY
Cyanea marksii	LW, MW		P, C, M	X		H, RF, L	X			P, C, M	R	S	X	LN
Cyanea tritomantha	LW, MW, WC		P, C	X		H, TF	X			P, C	R	S	X	NR
Cyrtandra nanawaleensis	LW		P	X		H	X			P	R	S	X	HY
Cyrtandra wagneri	LW		P	X		H, HR, E	X			P	R	S	X	LN, HY
Phyllostegia floribunda	LW, MM, MW		P	X	X	H	X			P			X	
Pittosporum hawaiiense	LM, MM,		P, C, M	X		H	X			P, C, M	R		X	NR

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		Agriculture and urban develop-ment	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change	Over-utilization	Disease	Predation/ Herbivory by ungulates	Predation/ Herbivory by other NN verte-brates	Predation/ Herbivory by NN inverte-brates	Inadequate existing regulatory mechanisms	Other species-specific threats
	MW													
Platydesma remyi	LW, MW		P	X		H	X			P			X	LN, NR
Pritchardia lanigera	LM, LW, MW, WC		P, G, M	X		H	X	X		P, G, M	R	LH, B	X	NR
Schiedea diffusa ssp. *macraei*	MW		P, C	X		H	X			P, C	R		X	LN
Schiedea hawaiiensis	MD		P, G, SH, M	X	X	H, DR	X			P, G, SH, M	R		X	LN
Stenogyne cranwelliae	MW, WC		P	X		H	X			P	R	S	X	
Animals														
Drosophila digressa (Picture-wing fly)	LM, MM, MW		P, G, C, M	X	X	H, DR	X					W, A	X	LN, LOH, F

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Vetericaris chaceorum (Anchialine pool shrimp)	AP		G, C			-	X						X	REC, SD, D

Factor A = Habitat Modification

Factor B = Overutilization

Factor C = Disease or Predation

Factor D = Inadequacy of Regulatory Mechanisms

Factor E = Other Species-Specific Threats

AP = Anchialine Pools

CO = Coastal

LD = Lowland Dry

LM = Lowland Mesic

LW = Lowland Wet

MD = Montane Dry

MM = Montane Mesic

MW = Montane Wet

DC = Dry Cliff

WC = Wet Cliff

P = Pigs

G = Goats

C = Cattle

SH = Sheep

M = Mouflon

R = Rats

S = Slugs

W = Wasps

A = Ants

LH = Leafhopper

B = Beetles

H = Hurricane

DR = Drought

RF = Rockfalls

L = Landslides

HR = Heavy Rain

E = Erosion

TF = Tree Fall

D = Dumping (*i.e.*, Human dumping of nonnative fish and trash)

LN = Limited Numbers

HY = Hybridization

NR = No Regeneration

F = Flies

LOH = Loss of Host

REC = Recreational vehicles

SD = Sedimentation

BILLING CODE 4310–55–C

Assumptions

We acknowledge that the specific nature of the threats to the individual species being proposed for listing are not completely understood. Scientific research directed toward each of the species proposed for listing is limited because of their rarity and the challenging logistics associated with conducting field work in Hawaii (*e.g.,* areas are typically remote, difficult to access and work in, and expensive to survey in a comprehensive manner). However, there is information available on many of the threats that act on Hawaiian ecosystems, and, for some ecosystems, these threats are well studied and understood. Each of the native species that occur in Hawaiian ecosystems suffers from exposure to those threats to differing degrees. For the purposes of our listing determination, our assumption is that the threats that act at the ecosystem level also act on each of the species that occur in those ecosystems, although in some cases we have additionally identified species-specific threats, such as predation by nonnative invertebrates. Similarly, for the purposes of our critical habitat determinations, our assumption is that the physical or biological features that support an adequately functioning ecosystem represent the physical or biological features required by the species that occur in those ecosystems (see Critical Habitat section, below). The species discussed in this proposed rule are the components of the native ecosystems that have shown declines in number of individuals, number of occurrences, or changes in species abundance and species composition that can be reasonably attributed to the threats discussed below.

The following constitutes a list of ecosystem-scale threats that affect the species proposed for listing in 10 of the described ecosystems on Hawaii Island:

(1) Foraging and trampling of native plants by feral pigs (*Sus scrofa*), goats (*Capra hircus*), cattle (*Bos taurus*), sheep (*Ovis aries*), or mouflon sheep (*Ovis gmelini musimon*), which can result in severe erosion of watersheds because these mammals inhabit terrain that is often steep and remote (Cuddihy and Stone 1990, p. 63). Foraging and trampling events destabilize soils that support native plant communities, bury or damage native plants, and have adverse water quality effects due to runoff over exposed soils.

(2) Ungulate destruction of seeds and seedlings of native plant species via foraging and trampling (Cuddihy and Stone 1990, pp. 63, 65) facilitates the conversion of disturbed areas from native to nonnative vegetative communities.

(3) Disturbance of soils by feral pigs from rooting can create fertile seedbeds for alien plants (Cuddihy and Stone 1990, p. 65), some of them spread by ingestion and excretion by pigs.

(4) Increased nutrient availability as a result of pigs rooting in nitrogen-poor soils, which facilitates establishment of alien weeds. Introduced vertebrates are known to enhance the germination of alien plants through seed scarification in digestive tracts or through rooting and fertilization with feces of potential seedbeds (Stone 1985, p, 253). In addition, alien weeds are more adapted to nutrient-rich soils than native plants (Cuddihy and Stone 1990, p. 65), and rooting activity creates open areas in forests allowing alien species to completely replace native stands.

(5) Rodent damage to plant propagules, seedlings, or native trees, which changes forest composition and structure (Cuddihy and Stone 1990, p. 67).

(6) Feeding or defoliation of native plants from alien insects, which can reduce geographic ranges of some species because of damage (Cuddihy and Stone 1990, p. 71).

(7) Alien insect predation on native insects, which affects pollination of native plant species (Cuddihy and Stone 1990, p. 71).

(8) Significant changes in nutrient cycling processes because of large numbers of alien invertebrates such as earthworms, ants, slugs, isopods, millipedes, and snails, resulting in changes to the composition and structure of plant communities (Cuddihy and Stone 1990, p. 73).

Each of the above threats is discussed in more detail below, and summarized in Table 3. The most-often cited effects of nonnative plants on native plant species are competition and displacement. Competition may be for water, light, or nutrients, or it may involve allelopathy (chemical inhibition of other plants). Alien plants may displace native species of plants by preventing their reproduction, usually by shading and taking up available sites for seedling establishment. Alien plant invasions may also alter entire ecosystems by forming monotypic stands, changing fire characteristics of native communities, altering soil-water regimes, changing nutrient cycling, or encouraging other nonnative organisms (Smith 1989, pp. 61–69; Vitousek *et al.* 1987, pp. 224–227).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Hawaiian Islands are located over 2,000 mi (3,200 km) from the nearest continent. This isolation has allowed the few plants and animals that arrived in the Hawaiian Islands to evolve into many highly varied and endemic species (species that occur nowhere else in the world). The only native terrestrial mammals in the Hawaiian Islands are two bat taxa, the extant Hawaiian hoary bat (*Lasiurus cinereus semotus*) and an extinct, unnamed insectivorous bat (Ziegler 2002, p. 245). The native plants of the Hawaiian Islands, therefore, evolved in the absence of mammalian predators, browsers, or grazers. As a result, many of the native species have lost unneeded defenses against threats such as mammalian predation and competition with aggressive, weedy plant species that are typical of continental environments (Loope 1992, p. 11; Gagne and Cuddihy 1999, p. 45; Wagner *et al.* 1999d, pp. 3–6). For example, Carlquist (in Carlquist and Cole 1974, p. 29) notes that ''Hawaiian plants are notably free from many characteristics thought to be deterrents to herbivores (toxins, oils, resins, stinging hairs, coarse texture).''

Native Hawaiian plants are therefore highly vulnerable to the impacts of introduced mammals and alien plants. In addition, species restricted and adapted to highly specialized locations (*e.g., Bidens hillebrandiana* ssp. *hillebrandiana*) are particularly vulnerable to changes (*e.g.,* nonnative species, hurricanes, fire, and climate change) in their habitat (Carlquist and Cole 1974, pp. 28–29; Loope 1992, pp. 3–6; Stone 1992, pp. 88–102).

Habitat Destruction and Modification by Agriculture and Urban Development

The consequences of past land use practices, such as agricultural or urban development, have resulted in little or no native vegetation below 2,000 ft (600 m) throughout the Hawaiian Islands (TNC 2007—*Ecosystem Database of ArcMap Shapefiles,* unpublished), largely impacting the coastal, lowland dry, lowland mesic, and lowland wet ecosystems. Although agriculture has been declining in importance, large tracts of former agricultural lands are being converted into residential areas or left fallow (TNC 2007—*Ecosystem Database of ArcMap Shapefiles,* unpublished). In addition, Hawaii's population has increased almost 7 percent in the past 10 years, further increasing demands on limited land and water resources in the islands (Hawaii

Department of Business, Economic Development and Tourism (HDBEDT) 2010).

Development and urbanization of the lowland dry ecosystem on Hawaii Island is a threat to one species proposed for listing in this rule, *Bidens micrantha* ssp. *ctenophylla,* which is dependent on this ecosystem. *Bidens micrantha* ssp. *ctenophylla* is currently found in an area less than 10 sq mi (26 sq km) on the leeward slopes of Hualalai volcano in the lowland dry ecosystem. The leeward slopes of Hualalai volcano encompass the increasingly urbanized region of north Kona, where there is very little undisturbed habitat (Pratt and Abbott 1997, p. 25). Approximately 25 percent (119 individuals of 475) of the largest of the 6 occurrences of this species is in the right-of-way of the proposed Ane Keohokalole Highway Project (USFWS 2010, in litt.) and Kaloko Makai Development, although 154 ac (62 ha) will be set aside as a lowland dry forest preserve (Kaloko Makai Dryland Forest Preserve) (see Kaloko Makai Development, below) to compensate for the loss of these individuals as a result of highway construction and prior to the Kaloko Makai Development. In addition, individuals of *Bidens micrantha* ssp. *ctenophylla* occur in areas where the development of the Villages of Laiopua Development at Kealakehe (see Department of Hawaiian Home Lands (DHHL), below) and of the Keahuolu affordable housing project (Whistler 2007, pp. 1–18; DHHL 2009, p. 15) is a threat to the species.

Habitat Destruction and Modification by Introduced Ungulates

Introduced mammals have greatly impacted the native vegetation, as well as the native fauna, of the Hawaiian Islands. Impacts to the native species and ecosystems of Hawaii accelerated following the arrival of Captain James Cook in 1778. The Cook expedition and subsequent explorers intentionally introduced a European race of pigs or boars and other livestock, such as goats, to serve as food sources for seagoing explorers (Tomich 1986, p. 120–121; Loope 1998, p. 752). The mild climate of the islands, combined with the lack of competitors or predators, led to the successful establishment of large populations of these introduced mammals, to the detriment of native Hawaiian species and ecosystems. The presence of introduced alien mammals is considered one of the primary factors underlying the alteration and degradation of native plant communities and habitats on the island of Hawaii. The destruction or degradation of habitat due to nonnative ungulates (hoofed mammals), including pigs, goats, cattle, sheep, and mouflon, is currently a threat to the ten ecosystems (lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, coastal, anchialine pool, dry cliff, and wet cliff) on Hawaii Island and their associated species. Habitat degradation or destruction by ungulates is also a threat to all 13 plant species (*Bidens hillebrandiana* ssp. *hillebrandiana, B. micrantha* ssp. *ctenophylla, Cyanea marksii, C. tritomantha, Cyrtandra nanawaleensis, C. wagneri, Phyllostegia floribunda, Pittosporum hawaiiense, Platydesma remyi, Pritchardia lanigera, Schiedea diffusa* ssp. *macraei, S. hawaiiensis,* and *Stenogyne cranwelliae*), the picture-wing fly *Drosophila digressa,* and the anchialine pool shrimp *Vetericaris chaceorum,* which are proposed for listing in this rule (Table 3).

The destruction or degradation of habitat due to pigs is currently a threat to nine of the Hawaii Island ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) and their associated species. Feral pigs are known to cause deleterious impacts to ecosystem processes and functions throughout their worldwide distribution (Campbell and Long 2009, p. 2319). In Hawaii, pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest current threats to forest ecosystems (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195). European pigs, introduced to Hawaii by Captain James Cook in 1778, hybridized with domesticated Polynesian pigs, became feral, and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. The Hawaii Territorial Board of Agriculture and Forestry started a feral pig eradication project in the early 1900s that continued through 1958, removing 170,000 pigs from forests Statewide (Diong 1982, p. 63). Feral pigs are currently present on Niihau, Kauai, Oahu, Molokai, Maui, and Hawaii.

These feral animals are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, pigs directly impact native plants by disturbing and destroying vegetative cover, and trampling plants and seedlings. It has been estimated that at a conservative rooting rate of 2 sq yards (yd) (1.7 sq m) per minute, with only 4 hours of foraging a day, a single pig could disturb over 1,600 sq yd (1,340 sq m) (or approximately 0.3 ac, or 0.12 ha) of groundcover per week (Anderson *et al.* 2007, p. 2).

Pigs may also reduce or eliminate plant regeneration by damaging or eating seeds and seedlings (further discussion of predation by nonnative ungulates is provided under *Factor C. Disease or Predation,* below). Pigs are a major vector for the establishment and spread of competing invasive, nonnative plant species by dispersing plant seeds on their hooves and fur, and in their feces (Diong 1982, pp. 169–170), which also serves to fertilize disturbed soil (Matson 1990, p. 245; Siemann *et al.* 2009, p. 547). Pigs feed on the fruits of many nonnative plants, such as *Passiflora tarminiana* (banana poka) and *Psidium cattleianum* (strawberry guava), spreading the seeds of these invasive species through their feces as they travel in search of food. Pigs also feed on native plants, such as Hawaiian tree ferns that they root up to eat the core of the trunk (Baker 1975, p. 79). In addition, rooting pigs contribute to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Medeiros *et al.* 1986, pp. 27–28; Scott *et al.* 1986, pp. 360–361; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Aplet *et al.* 1991, p. 56; Loope *et al.* 1991, pp. 1–21; Gagne and Cuddihy 1999, p. 52; Nogueira-Filho *et al.* 2009, pp. 3,677–3,682; Dunkell *et al.* 2011, pp. 175–177). Erosion impacts native plant communities by watershed degradation and alteration of plant nutrient status, as well as damage to individual plants from landslides (Vitousek *et al.* 2009, pp. 3074–3086; Chan-Halbrendt *et al.* 2010, p. 252).

Pigs have been cited as one of the greatest threats to the public and private lands within the Olaa Kilauea Partnership (an area of land that includes approximately 32,000 ac (12,950 ha) in the upper sections of the Olaa and Waiakea forests above Volcano village) that comprise the lowland mesic, lowland wet, montane mesic, and montane wet ecosystems that support individuals of three of the plant species proposed for listing (*Cyanea tritomantha, Phyllostegia floribunda,* and *Pittosporum hawaiiense*) (Olaa Kilauea Partnership Area Feral Animal Monitoring Report 2005, pp. 1–4; Perlman 2007, in litt.; Pratt 2007a, in litt.; Pratt 2007b, in litt.; Benitez *et al.* 2008, p. 58; HBMP 2010f; HBMP 2010h; PEPP 2010, p. 60, TNC 2012, in litt.). Impacts from feral pigs are also a threat to the coastal, lowland mesic, lowland

wet, montane wet, dry cliff, and wet cliff ecosystems in the northern Kohala Mountains and adjacent coastline. These ecosystems support occurrences of seven of the plant species proposed for listing (*Bidens hillebrandiana* ssp. *hillebrandiana, Cyanea tritomantha, Cyrtandra wagneri, Platydesma remyi, Pritchardia lanigera, Schiedea diffusa* ssp. *macraei,* and *Stenogyne cranwelliae*) (Wood 1995, in litt.; Wood 1998, in litt.; Perlman *et al.* 2001, in litt.; Wagner *et al.* 2005d, pp. 31–33; Kohala Mountain Watershed Partnership (KMWP) 2007, pp. 54–56; Lorence and Perlman 2007, pp. 357–361; HBMP 2010a; HBMP 2010c; HBMP 2010f; HBMP 2010i; HBMP 2010j; HBMP 2010k; PEPP 2010, pp. 63, 101, 106; Bio 2011, pers. comm.). In addition, feral pigs are a threat to the lowland wet and montane wet ecosystems in south Kona and the Puna district that support the plants *Cyanea marksii* and *Cyrtandra nanawaleensis* (Bio 2011, pers. comm.; Magnacca 2011b, pers. comm.; Maui Forest Bird Recovery Project 2011, in litt.). Feral pigs have also been reported in the lowland dry ecosystem that supports the plants *Bidens micrantha* ssp. *ctenophylla* (Bio 2011, pers. comm.) and the montane dry ecosystem that supports habitat for the only known occurrence of the plant *Schiedea hawaiiensis* (Mitchell *et al.* 2005c; U.S. Army Garrison 2006, pp. 27, 34, 95–97, 100–107, 112.). Although we do not have direct evidence of feral pigs threatening the particular species on Hawaii Island that are proposed for listing in this proposed rule, those threats have been documented on other islands where pigs have been introduced (Mitchell *et al.* 2005c; U.S. Army Garrison 2006, pp. 27, 34, 95–97, 100–107, 112). We believe it is reasonable to infer that feral pig threats to these species that have been observed on other Hawaiian islands would act in a similar manner on Hawaii Island, where those species interact.

Many of the most important host plants of Hawaiian picture-wing flies (*Charpentiera, Pleomele, Reynoldsia, Tetraplasandra, Urera,* and the lobelioids (*e.g., Cyanea* spp.)) are also among the most susceptible to damage from feral ungulates, such as pigs (Foote and Carson 1995, p. 370; Kaneshiro and Kaneshiro 1995, pp. 8, 39; Magnacca *et al.* 2008, p. 32). Feral pig browsing alters the essential microclimate in picture-wing fly habitat by opening up the canopy, leading to increased desiccation of soil and host plants, which disrupts the host plant life cycle and decay processes, resulting in disruption of the picture-wing fly life cycle, particularly oviposition and larvae substrate (Magnacca *et al.* 2008, pp. 1, 32). Foote and Carson (1995, p. 369) have experimentally demonstrated the above detrimental effects of feral pigs on *Drosophila* spp. in wet forest habitat on the island of Hawaii. In addition, Montgomery (2005, in litt.; 2007, in litt.) and Foote (2005, pers. comm.) have observed feral pig damage to host plants (*e.g., Charpentiera* sp., *Cheirodendron* sp., *Pleomele* sp., *Tetraplasandra* sp., *Urera kaalae*) of Hawaiian picture-wing flies on the island of Hawaii (Foote 2005, pers. comm.) and throughout the main Hawaiian Islands (Montgomery 2005, in litt.; 2007, in litt.). Magnacca (2012, pers. comm.) has observed the lack of regeneration of picture-wing fly host plants due to destruction of seedlings caused by pig rooting and herbivory.

The destruction or degradation of habitat due to goats is currently a threat to all 10 of the described ecosystems on Hawaii Island (anchialine pool, coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) and their associated species. Goats, native to the Middle East and India, were also successfully introduced to the Hawaiian Islands in the late 1700s. Actions to control feral goat populations began in the 1920s (Tomich 1986, pp. 152–153); however, goats still occupy a wide variety of habitats on Hawaii Island, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (van Riper and van Riper 1982, pp. 34–35; Stone 1985, p. 261; Kessler 2011, pers. comm.). Goats are able to access, and forage in, extremely rugged terrain, and they have a high reproductive capacity (Clarke and Cuddihy 1980, pp. C–19, C–20; Culliney 1988, p. 336; Cuddihy and Stone 1990, p. 64). Because of these factors, goats are believed to have completely eliminated some plant species from islands (Atkinson and Atkinson 2000, p. 21).

Goats can be highly destructive to native vegetation, and contribute to erosion by eating young trees and young shoots of plants before they can become established, creating trails that damage native vegetative cover, promoting erosion by destabilizing substrate and creating gullies that convey water, and dislodging stones from ledges that can cause rockfalls and landslides and damage vegetation below (Cuddihy and Stone 1990, pp. 63–64). A recent study by Chynoweth *et al.* (2011, in litt.), which deployed GPS (global positioning system) satellite collars on 12 feral goats to track movement patterns every 2 hours for 1 year in Pohakuloa Training Area, found that goats prefer native-dominated shrublands in the montane dry ecosystem during the day and barren lava at night. Pohakuloa Training Area supports one of the few montane dry forest ecosystems on Hawaii Island that supports native plants in the montane dry ecosystem, including the only occurrence of the plant *Schiedea hawaiiensis* (U.S. Army Garrison 2006, pp. 27, 34; Evans 2011, in litt.). In addition, one of the two occurrences of the proposed plant species *Pritchardia lanigera* is known from an unfenced area of the Kohala Mountains, where herds of wild goats and other ungulates occur (Maly and Maly 2004 *in* KMWP 2007, p. 55; KMWP 2007, pp. 54–55; Warshauer *et al.* 2009, pp. 10, 24; Laws *et al.* 2010, in litt.; Ikagawa 2011, in litt.). Maly and Maly (2004 *in* KMWP 2007, p. 55) report that ''herds of wild goats roam throughout this region, trampling, grubbing, and rending, grinding the bark of old trees and eat the young ones * * * which will destroy the beauty and alter the climate of the mountainous region of Hawaii.'' There are direct observations that goats are also altering the coastal ecosystem along the Kohala Mountains, the location of the only known wild individuals of the plant *Bidens hillebrandiana* ssp. *hillebrandiana* (Warshauer *et al.* 2009, p. 24; Bio 2011, pers. comm.). Goats are also found in North Kona and have been observed browsing in the lowland dry ecosystem that supports the plant *B. micrantha* ssp. *ctenophylla* (Bio 2011, pers. comm.; Knoche 2011, in litt.). Fresh seedlings from native plants attract goats to the dry and rough lava (Bio 2011, pers. comm.). Further, the host plant (*Charpentiera* spp.) of the proposed picture-wing fly appears to be decreasing throughout its range due to impacts from browsing goats (Foote and Carson 1995, p. 369; Science Panel 2005, pp. 1–23; Magnacca *et al.* 2008, p. 32). Feral goat browsing alters the picture-wing fly's essential microclimate by opening up the canopy leading to increased desiccation of soil and host plants, which disrupts the host plant life cycle and decay processes, resulting in the disruption of the picture-wing fly life cycle, particularly oviposition and larvae substrate (Magnacca *et al.* 2008, pp. 1, 32). Based on observations of goats and their scat (Magnacca 2012, pers. comm.) within the Ka Lae region where the Lua O Palahemo anchialine pool is located, the Service believes that goats contribute to the degradation of the anchialine pool habitat and, thus, are a threat to *Vetericaris chaceorum*. Feral goats trample and forage on both native and

nonnative plants around and near the pool opening at Lua O Palahemo, and increase erosion around the pool and sediment entering the pool.

The destruction or degradation of habitat due to cattle is currently a threat to five of the described ecosystems (anchialine pool, lowland mesic, lowland wet, montane mesic, and montane wet) on Hawaii Island and their associated species. Cattle, the wild progenitors of which were native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds (as many as 12,000 on the island of Hawaii) developed as a result of restrictions on killing cattle decreed by King Kamehameha I (Cuddihy and Stone 1990, p. 40). While small cattle ranches were developed on Kauai, Oahu, Molokai, west Maui, and Kahoolawe, very large ranches of tens of thousands of acres (thousands of hectares) were created on east Maui and Hawaii Island (Stone 1985, pp. 256, 260; Broadbent 2010, in litt.). Logging of native *Acacia koa* was combined with establishment of cattle ranches, quickly converting native forest to grassland (Tomich 1986, p. 140; Cuddihy and Stone 1990, p. 47). Feral cattle can presently be found on the islands of Maui and Hawaii, where ranching is still a major commercial activity.

Feral cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle degrades to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. In addition, several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Tomich 1986, pp. 140–150; Cuddihy and Stone 1990, p. 29).

The wet forests of the Kohala Mountains are reported to have a feral cattle population of at least 100 individuals that are causing forest degradation by trampling and browsing, which leads to subsequent increased nitrogen availability through deposition of feces (Stone 1985, p. 253), all of which contribute to the influx of nonnative plant and animal species (KMWP 2007, pp. 54–55; Laws 2010, in litt.). Feral cattle are reported from remote regions on Hawaii Island, including the back of both Pololu and Waipio Valleys (KMWP 2007, p. 55). Feral cattle are a threat to the lowland wet and montane wet ecosystems in the Kohala Mountains where individuals of *Cyanea tritomantha* and *Pritchardia lanigera,* and the last wild individual of *Schiedea diffusa* ssp. *macraei,* are reported (PEPP 2010, pp. 59–60; Bio 2011, pers. comm.). According to a 2010 Service report (USFWS 2010, pp. 3–15, 4–86), a herd of 200 to 300 feral cattle roams the Kona unit of the Hakalau Forest NWR (USFWS 2010, p. 3–15, 4–86). Field biologists have observed cattle-induced habitat degradation at all elevations in this refuge unit, including within the montane wet ecosystem that supports individuals of *Cyanea marksii* (PEPP 2007, p. 61; USFWS 2010, pp. 1–15, 2–13, 4–10, 4–58–4–59, 4–82, 4–86; Bio 2011, pers. comm.; Krauss 2012, pers. comm.). In addition, the host plant (*Charpentiera* spp.) of the proposed picture-wing fly species (*Drosophila digressa*) appears to be decreasing throughout its range due to impacts from cattle browsing in the lowland mesic and montane mesic ecosystems (Science Panel 2005, pp. 1–23; Magnacca 2011b, in litt.). Feral cattle browsing alters the picture-wing fly's essential microclimate by opening up the canopy, leading to increased desiccation of soil and host plants, which disrupts the host plant life cycle and decay processes, resulting in the disruption of the picture-wing fly life cycle, particularly oviposition and larvae substrate (Magnacca *et al.* 2008, pp. 1, 32). According to Palikapu Dedman with the Pele Defense Fund, observations of feral cattle in the Ka Lae region where the Lua O Palahemo anchialine pool is located contribute to the degradation of the anchialine pool habitat. We therefore conclude that feral cattle are a threat to *Vetericaris chaceorum* (Richardson 2012, in litt., pp. 1–2). Feral cattle trample and forage on both native and nonnative plants around and near the pool opening at Lua O Palahemo, and increase erosion around the pool and sediment entering the pool.

The destruction or degradation of habitat due to feral sheep is currently a threat to the montane dry ecosystem on Hawaii Island and its associated species. Sheep were introduced to Hawaii Island in 1791, when Captain Vancouver brought five rams and two ewes from California (Tomich 1986, pp. 156–163). Soon after, stock was brought from Australia, Germany, and the Mediterranean for sheep production (Tomich 1986, pp. 156–163; Cuddihy and Stone 1990, p. 65–66). Feral sheep became established on leeward Mauna Kea by 1876 (Cuddihy and Stone 1990, p. 65–66), and by the early 1930s, reached close to 40,000 individuals (Scowcroft and Conrad 1992, p. 627). Acquiring the majority of their water needs by consuming vegetation, sheep inhabited dry forests in remote regions of Mauna Kea and Mauna Loa, including the saddle between the two volcanoes. Feral sheep browse and trample native vegetation and have decimated large areas of native forest and shrubland on Hawaii Island (Tomich 1986, pp. 156–163; Cuddihy and Stone 1990, p. 65–66). Browsing erodes top soil, which alters moisture regimes and micro-environments and results in the loss of native plant and animal taxa (Tomich 1986, pp. 156–163; Cuddihy and Stone 1990, p. 65–66). In addition, nonnative opportunistic plant seeds get dispersed to disturbed forest sites by adhering to sheep wool coats (Hawaii Division of Forestry and Wildlife (HDOFAW) 2002, p. 3).

In 1962, game hunters intentionally crossbred feral sheep with mouflon sheep and released them on Mauna Kea (Tomich 1986, pp. 156–163). In *Palila* v. *Hawaii Department of Land and Natural Resources* (471 F. Supp. 985 (Haw. 1979)), the Federal court ordered complete removal of feral sheep from Mauna Kea in 1979, because they were harming the endangered palila (*Loxioides bailleui*) by degrading and destroying palila habitat in the montane dry ecosystem. Throughout the past 30 years, attempts to protect the vegetation of Mauna Kea and the saddle from sheep have only been sporadically effective (Scowcroft and Conrad 1992, p. 628). Currently, a large feral population surrounds Mauna Kea and extends into the saddle and northern part of Mauna Loa, including the State forest reserves where they trample and browse endangered plants (Hess 2008, p. 1). At the U.S. Army's Pohakuloa Training Area, located in the saddle area of the island, biologists have reported that feral sheep are a threat to the last occurrence of the plant species *Schiedea hawaiiensis,* which occurs in the montane dry ecosystem (Mitchell *et al.* 2005a; U.S. Army Garrison 2006, pp. 27, 34).

Five of the described ecosystems (lowland mesic, lowland wet, montane dry, montane mesic, and montane wet) on Hawaii Island, and their associated species are currently threatened by the destruction or degradation of habitat due to mouflon sheep. The mouflon sheep (mouflon), native to Asia Minor, was introduced to the islands of Lanai and Hawaii in the 1950s, as a managed game species, and has become widely established on these islands (Tomich 1986, pp. 163–168; Cuddihy and Stone 1990, p. 66; Hess 2008, p. 1). In 1968, mouflon were introduced to Kahuku Ranch (now a unit of HVNP) on Mauna Loa for trophy hunting. By 2008, mouflon ranged over the southern part

of Mauna Loa in the Kahuku area on adjacent public and private lands (Hess 2008, p. 1). According to Ikagawa (2011, in litt.), mouflon are found on the slopes of both Mauna Loa and Mauna Kea. Ikagawa (2011, in litt.) also notes that mouflon and mouflon-sheep hybrids are found from sea level to over 3,280 ft (1,000 m) elevation. Mouflon have high reproduction rates; for example, the original population of 11 individuals on the island of Hawaii has increased to more than 2,500 in 36 years, even though mouflon are hunted as a game animal (Hess 2008, p. 3). Mouflon only gather in herds when breeding, thus limiting control techniques and hunting efficiency (Hess 2008, p. 3; Ikagawa 2011, in litt.). Mouflon are both grazers and browsers, and have decimated vast areas of native forest and shrubland through browsing and bark stripping (Stone 1985, p. 271; Cuddihy and Stone 1990, pp. 63, 66; Hess 2008, p. 3). Mouflon also create trails and pathways through thick vegetation, leading to increased runoff and erosion through soil compaction. In some areas, the interaction of browsing and soil compaction has led to a change from native rainforest to grassy scrublands (Hess 2008, p. 3). Field biologists have observed habitat degradation in five of the described ecosystems (lowland mesic, lowland wet, montane dry, montane mesic, and montane wet) that support four plants proposed for listing (*Cyanea marksii, Pittosporum hawaiiense, Pritchardia lanigera,* and *Schiedea hawaiiensis*) (Bio 2011, pers. comm.; Ikagawa 2011, in litt.; Pratt 2011d, in litt.), and the picture-wing fly (*Drosophila digressa*) (Magnacca 2011b, pers. comm.). Many of the current and proposed fenced exclosures on Hawaii Island are only 4 ft (1.3 m) in height, as they are designed to exclude feral pigs, goats, and sheep. However, a fence height of at least 6 ft (2 m) is required to exclude mouflon sheep, as they can easily jump a 4-ft (1.3-m) fence (Ikagawa 2011, in litt.). The increased range of mouflon, as well as the lack of adequately protected habitat, increase the threat of mouflon sheep to additional ecosystems on Hawaii Island.

Axis deer (*Axis axis*) were first introduced to Molokai in 1868, Lanai in 1920, and Maui in 1959 (Hobdy 1993, p. 207; Erdman 1996, pers. comm. cited in Waring 1996, in litt., p. 2; Hess 2008, p. 2). Recently (2010–2011), unauthorized introduction of axis deer to the island of Hawaii as a game animal has occurred (Kessler 2011, in litt.; Aila 2012a, in litt.). They have been observed in the regions of Kohala, Kau, Kona, and Mauna Kea (HDLNR 2011, in litt.). The HDLNR–HDOFAW has developed a response-and-removal plan, including a partnership now underway between HDLNR, Hawaii Department of Agriculture (HDOA), the Big Island Invasive Species Committee (BIISC), Federal natural resource management agencies, ranchers, farmers, private landowners, and concerned citizens (Big Island-Big Island.com, June 6, 2011). The partnership is working with animal trackers and game cameras to survey locations where axis deer have been observed in an effort to eradicate them on the island (Big Island-Big Island.com, June 6, 2011; Osher 2012, in litt.). There is a high level of concern by the partnership due to the negative impacts of axis deer on agriculture and native ecosystems on neighboring islands (*e.g.,* Maui) (Aila 2011, in litt.; Schipper 2011, in litt.; Aila 2012b, in litt.). In response to the presence of axis deer on Hawaii Island, the Hawaii Invasive Species Council drafted House Bill 2593 (Draft 2), to amend House Revised Statutes (Haw. Rev. Stat.) 91, which allowed agencies to adopt emergency rules in instances of imminent peril to the public health, safety, or morals, or to livestock and poultry health (Aila 2012a, in litt.). House Bill 2593 (Draft 2) addresses the gap in the current emergency rules authority, expanding the ability of State agencies to adopt emergency rules to address situations that impose imminent threats to natural resources (Aila 2012a, in litt.; Martin 2012, in litt.) (see *Factor D. The Inadequacy of Existing Regulatory Mechanisms,* below). Emergency rules are valid for 120 days after they are registered and approved, and after 6 months a permanent rule can be enacted (Cravalho 2012, pers. comm). On June 21, 2012, House Bill 2593 was enacted into law as Act 149 (''Relating to Emergency Rules for Threats to Natural Resources or the Health of the Environment'').

Axis deer are primarily grazers, but also browse numerous palatable plant species, including those grown as commercial crops (Waring 1996, in litt., p. 3; Simpson 2001, in litt.). They prefer the lower, more openly vegetated areas for browsing and grazing; however, during episodes of drought (*e.g.,* from 1998–2001 on Maui (Medeiros 2010, pers. comm.)), axis deer move into urban and forested areas in search of food (Waring 1996, in litt., p. 5; Nishibayashi 2001, in litt.). Like goats, axis deer can be highly destructive to native vegetation and contribute to erosion by eating young trees and young shoots of plants before they can become established, creating trails that can damage native vegetative cover, promoting erosion by destabilizing substrate and creating gullies that convey water, and by dislodging stones from ledges that can cause rockfalls and landslides and damage vegetation below (Cuddihy and Stone 1990, pp. 63–64). The unauthorized introduction of axis deer on Hawaii Island is a concern due to the devastating impacts of habitat destruction by axis deer in nine ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on the islands of Kahoolawe, Lanai, and Maui (Mehrhoff 1993, p. 11; Anderson 2002, poster; Swedberg and Walker 1978, cited in Anderson 2003, pp. 124–125 Perlman 2009, in litt., pp. 4–5; Hess 2008, p. 3; Hess 2010, pers. comm.; Kessler 2010, pers. comm.; Medeiros 2010, pers. comm.). As reported on the islands of Kahoolawe, Lanai, and Maui, the spread of axis deer into nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Hawaii Island is expected to lead to similar habitat degradation and destruction if the deer are not controlled. The results from the studies above, in addition to the confirmed sightings of axis deer on Hawaii Island, suggest that axis deer can significantly alter these ecosystems and directly damage or destroy native plants. Although habitat degradation due to axis deer has not yet been observed on Hawaii Island, we believe it is reasonable to assume similar habitat effects on this island. Based on the prevailing evidence of the documented impacts to native ecosystems and individual plants on the other islands, we determine that the expanding population of axis deer on the Island of Hawaii, while not currently resulting in population-level effects to native plants, is expected to do so in the future if the deer are not managed or controlled. As a result, we currently do not believe that the existing population of axis deer on Hawaii Island is a threat; however, we expect that as the population of axis deer expands, axis deer will become a significant threat to the native plants and ecosystems on Hawaii Island in the future.

In summary, all of the 15 species proposed for listing and that are dependent upon the 10 ecosystems (anchialine pool, coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) identified in this proposed rule are exposed to the ongoing threat of feral ungulates (pigs,

goats, cattle, sheep, and mouflon sheep). Additionally, if not adequately managed or controlled, impacts from axis deer may also become a significant threat to these ecosystems in the future. These negative impacts result in the destruction and degradation of habitat for the native species on Hawaii Island. The effects of these nonnative animals include the destruction of vegetative cover; trampling of plants and seedlings; direct consumption of native vegetation; soil disturbance and sedimentation; dispersal of alien plant seeds on hooves and coats, and through the spread of seeds in feces; alteration of soil nitrogen availability; and creation of open, disturbed areas conducive to further invasion by nonnative pest plant species. All of these impacts lead to the subsequent conversion of a plant community dominated by native species to one dominated by nonnative species (see Habitat Destruction and Modification by Nonnative Plants below). In addition, because these mammals inhabit terrain that is often steep and remote (Cuddihy and Stone 1990, p. 59), foraging and trampling contributes to severe erosion of watersheds and degradation of streams (Dunkell *et al.* 2011, pp. 175–194). As early as 1900, there was increasing concern expressed about the integrity of island watersheds, due to effects of ungulates and other factors, leading to the establishment of a professional forestry program emphasizing soil and water conservation (Nelson 1989, p. 3).

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, the deliberate introduction of nonnative plants and animals, and agricultural development (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). Of these 100 nonnative pest plant species, over 35 species have altered the habitat of 14 of the 15 species proposed for listing (only the proposed anchialine pool shrimp is not directly impacted by nonnative plants (see Table 3)). Some of the nonnative plants were brought to Hawaii by various groups of people, including the Polynesians, for food or cultural reasons. 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. Ranchers intentionally introduced pasture grasses and other nonnative plants for agriculture, and sometimes inadvertently introduced weeds 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 impact native habitat in Hawaii, including 9 of the described Hawaii Island ecosystems that support 14 of the 15 proposed species (all except the anchialine pool shrimp), and directly adversely impact the 13 proposed plant species, by: (1) Modifying the availability of light through alterations of the canopy structure; (2) altering soil-water regimes; (3) modifying nutrient cycling; (4) altering the fire regime affecting native plant communities (*e.g.,* successive fires that burn farther and farther into native habitat, destroying native plants and removing habitat for native species by altering microclimatic conditions to favor alien species); and (5) 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). Below, we have organized a list of nonnative plants by their ecosystems, followed by a discussion of the specific negative effects of those nonnative plants on the species proposed for listing here.

Nonnative Plants in the Coastal Ecosystem

Nonnative plant species that threaten *Bidens hillebrandiana* ssp. *hillebrandiana,* the only plant species proposed for listing in this rule that inhabits the coastal ecosystem on Hawaii Island, include the understory and subcanopy species *Pluchea carolinensis* (sourbush), *P. indica* (Indian fleabane), *Lantana camara* (lantana), and *Melastoma* spp. (Perlman and Wood 2006, in litt.; Bio 2011, pers. comm.). Nonnative canopy species that threaten *B. hillebrandiana* ssp. *hillebrandiana* include *Casuarina equisetifolia* (ironwood) (Perlman and Wood 2006, in litt.). In addition, *B. hillebrandiana* ssp. *hillebrandiana* is threatened by the nonnative grass *Pennisetum setaceum* (fountain grass) (Perlman and Wood 2006, in litt.; Bio 2011, pers. comm.). These nonnative plant species pose serious and ongoing threats to the species *B. hillebrandiana* ssp. *hillebrandiana,* which depends on this ecosystem (see *Specific Nonnative Plant Species Impacts* below).

Nonnative Plants in the Lowland Dry Ecosystem

Nonnative plant species that threaten *Bidens micrantha* ssp. *ctenophylla,* the only plant species proposed for listing in this rule that inhabits the lowland dry ecosystem on Hawaii Island include the understory and subcanopy species *Lantana camara, Leucana leucocephala* (koa haole), *Pluchea carolinensis,* and *P. indica* (HBMP 2010b). Nonnative canopy species that are a threat to *B. micrantha* ssp. *ctenophylla* include *Grevillea* spp., *Prosopis pallida* (kiawe), and *Schinus terebinthifolius* (christmasberry) (HBMP 2010b). In addition, *B. micrantha* ssp. *ctenophylla* is threatened by the nonnative grasses *Melinis repens* (natal redtop) and *Pennisetum setaceum* (HBMP 2010b). See *Specific Nonnative Plant Species Impacts* below for specific threats each of these nonnative plant species pose to the species *Bidens micrantha* ssp. *ctenophylla,* which depends on this ecosystem.

Nonnative Plants in the Lowland Mesic Ecosystem

Nonnative plant species that threaten two plant species (*Pittosporum hawaiiense* and *Pritchardia lanigera*) and the picture-wing fly proposed for listing in this rule that inhabit the lowland mesic ecosystem on Hawaii Island include the understory and subcanopy species *Delairea odorata* (cape ivy), *Hedychium gardnerianum* (kahili ginger), *Lantana camara,* and *Rubus rosifolius* (thimbleberry) (HDOFAW 1992, p. 11–22; Benitez *et al.* 2008, pp. 24–52; Pacific Islands Ecosystems at Risk (PIER) 2012a). Nonnative canopy species that are a threat to the three species include *Omalanthus populifolius* (Queensland poplar), *Psidium cattleianum,* and *Schinus terebinthifolius* (Benitez *et al.* 2008, pp. 24–58). Additional species that are a threat to the three species are the nonnative grasses *Ehrharta stipoides* (meadow rice grass) and *Paspalum conjugatum* (Hilo grass) (Denslow *et al.* 2006, p. 118). These nonnative plant species pose serious and ongoing threats to the three species that depend on this ecosystem (see *Specific Nonnative Species Impacts* below).

Nonnative Plants in the Lowland Wet Ecosystem

Nonnative plant species that are a threat to the 7 of the 13 plant species (*Cyanea marksii, Cyaneatritomantha, Cyrtandra nanawaleensis, Cyrtandra wagneri, Phyllostegia floribunda, Platydesma remyi, and Pritchardia lanigera*) proposed for listing in this rule that inhabit the lowland wet ecosystem on Hawaii Island include the understory and subcanopy species *Clidemia hirta* (Koster's curse), *Erigeron karvinskianus* (daisy fleabane), *Hedychium gardnerianum, Juncus effusus* (Japanese mat rush), *J. ensifolius* (dagger-leaved rush), *J. planifolius* (bog rush), *Melastoma* spp., *Passiflora edulis* (passion fruit), *P. tarminiana* (banana poka), *Polygonum punctatum* (water smartweed), *Rubus argutus* (prickly Florida blackberry), *R. ellipticus* (yellow Himalayan raspberry), *R. rosifolius, Sphaeropteris cooperi* (Australian tree fern), *Tibouchina herbacea* (glorybush), and *T. urvilleana* (princess flower) (Wood 1995, in litt.; Perlman *et al.* 2001, in litt.; Perlman and Wood 2006, in litt.; Perlman and Perry 2003, in litt.; Lorence and Perlman 2007, pp. 357–361; PEPP 2007, pp. 1–65; PEPP 2008, pp. 87–111; Perlman and Bio 2008, in litt.; Perlman *et al.* 2008, in litt.; HBMP 2010c; HBMP 2010e; HBMP 2010f; HBMP 2010g; HBMP 2010h; HBMP 2010i; PEPP 2010, pp. 33–121). Nonnative canopy species that are a threat to the seven species include *Angiopteris evecta* (mule's foot fern), *Falcataria moluccana* (albizia), *Miconia calvescens* (miconia), *Psidium cattleianum, Schefflera actinophylla* (octopus tree) (Palmer 2003, p. 48; HBMP 2010c; HBMP 2010e; HBMP 2010f; HBMP 2010g; HBMP 2010h; HBMP 2010i; PEPP 2010, p. 62; Lau 2011, in litt.; Magnacca 2011b, pers. comm.; Pratt 2011a, in litt.; Price 2011, in litt.). Nonnative grasses that threaten this ecosystem are *Ehrharta stipoides* and *Setaria palmifolia* (palmgrass) (Lorence and Perlman 2007, pp. 357–361; PEPP 2007, pp. 1–65; HBMP 2010c; HBMP 2010f; HBMP 2010g). These nonnative plant species pose serious and ongoing threats to the seven species that depend on this ecosystem (see *Specific Nonnative Plant Species Impacts* below).

Nonnative Plants in the Montane Dry Ecosystem

Nonnative plant species that threaten the plant species *Schiedea hawaiiensis* in the montane dry ecosystem on Hawaii Island include the understory and subcanopy species *Heterotheca grandiflora* (telegraph weed) and *Senecio madagascariensis* (Madagascar fireweed) (Herbst *et al.* 2004, p. 4; Le Roux *et al.* 2006, pp. 694–702; U.S. Army Garrison 2009, p. 5; Bio 2011, pers. comm.; Evans 2011, pers. comm.; HISC 2012; Jepson eFlora 2012–*Jepson Herbarium Database*). The nonnative grass *Pennisetum setaceum* also threatens *Schiedea hawaiiensis* (U.S. Army Garrison 2009, p. 5; Bio 2011, pers. comm.; Evans 2011, pers. comm.). These nonnative plant species pose serious and ongoing threats to the proposed species *Schiedea hawaiiensis,* which depends on this ecosystem (see *Specific Nonnative Plant Species Impacts* below).

Nonnative Plants in the Montane Mesic Ecosystem

Nonnative plant species that threaten two plant species (*Phyllostegia floribunda* and *Pittosporum hawaiiense*) and the picture-wing fly proposed for listing in this rule that inhabit the montane mesic ecosystem on Hawaii Island include the understory and subcanopy species *Anemone hupehensis* var. *japonica* (Japanese anemone), *Buddleia asiatica* (dog tail), *Clidemia hirta, Hedychium gardnerianum, Rubus argutus,* and *Rubus rosifolius* (HDOFAW 1992, p. 17; Benitez *et al.* 2008, pp. 24–53; PEPP 2008, pp. 106–107; Perlman *et al.* 2008, in litt.; HBMP 2010h; PIER 2011a). Canopy species that threaten the three species include *Psidium cattleianum* and *Schinus terebinthifolius* (Benitez *et al.* 2008, pp. 29–30; Perlman *et al.* 2008, in litt.). Nonnative grasses that threaten this ecosystem are *Andropogon virginicus* (broomsedge), *Ehrharta stipoides, Pennisetum setaceum,* and *Setaria palmifolia* (HDOFAW 1992, p. 17; Benitez *et al.* 2008, pp. 24–53; PEPP 2008, pp. 106–107; HBMP 2010c). These nonnative plant species pose serious and ongoing threats to the species that depend on this ecosystem (see *Specific Nonnative Plant Species Impacts* below).

Nonnative Plants in the Montane Wet Ecosystem

Nonnative plant species that threaten 8 of the 13 plant species (*Cyanea marksii, C. tritomantha, Phyllostegia floribunda, Pittosporum hawaiiense, Platydesma remyi, Pritchardia lanigera, Schiedea diffusa* ssp. *macraei,* and *Stenogyne cranwelliae*), and the picture-wing fly proposed for listing in this rule that inhabit the montane wet ecosystem on Hawaii Island include the understory and subcanopy species *Clidemia hirta, Erigeron karvinskianus, Hedychium coronarium* (white ginger), *H. gardnerianum, Juncus* spp., *Lantana camara, Passiflora edulis, P. tarminiana, Polygonum punctatum, Rubus argutus, R. ellipticus, R. rosifolius, Tibouchina herbacea, T. urvilleana,* and *Ulex europaeus* (gorse) (Wood 1995, in litt.; Benitez *et al.* 2008, pp. 1–118; Perlman and Bio 2008, in litt.; HBMP 2010c; HBMP 2010d; HBMPe; HBMP 2010f; HBMP 2010h; HBMPi; HMBP 2010j; HBMP 2010k; USFWS 2010, pp. 4–74—4–75). Nonnative canopy species that threaten the nine proposed species include *Sphaeropteris cooperi* and *Psidium cattleianum* (HBMP 2010c; HBMP 2010h; HBMP 2010i). Nonnative grasses that threaten this ecosystem are *Andropogon* ssp., *Axonopus fissifolius* (carpetgrass), *Ehrharta stipoides, Paspalum conjugatum,* and *Setaria palmifolia* (Wood 1995, in litt.; Perlman and Bio 2008, in litt.; HBMP 2010c; HBMP 2010h; HBMP 2010i). These nonnative plant species pose serious and ongoing threats to nine proposed species that depend on this ecosystem (see *Specific Nonnative Plant Species Impacts* below).

Nonnative Plants in the Dry Cliff Ecosystem

Nonnative plant species that threaten *Bidens hillebrandiana* ssp. *hillebrandiana,* the only plant species proposed for listing in this rule that inhabits the dry cliff ecosystem on Hawaii Island, include the understory and subcanopy species *Lantana camara, Melastoma* spp., and *Pluchea carolinensis* (Perlman and Wood 2006, in litt.; Bio 2011, pers. comm.). Nonnative canopy species that threaten *B. hillebrandiana* ssp. *hillebrandiana* include *Casuarina equisetifolia* and *Psidium cattleianum* (Perlman and Wood 2006, in litt.; Bio 2011, pers. comm.). Nonnative grasses that threaten this ecosystem include *Digitaria setigera* and *Pennisetum setaceum* (Perlman and Wood 2006, in litt.; Bio 2011, pers. comm.). These nonnative plant species pose serious and ongoing threats to all three of the species proposed for listing that depend on this ecosystem (see *Specific Nonnative Plant Species Impacts* below).

Nonnative Plants in the Wet Cliff Ecosystem

Nonnative plant species that threaten the three plant species (*Cyanea tritomantha, Pritchardia lanigera,* and *Stenogyne cranwelliae*) proposed for listing in this rule that inhabit the wet cliff ecosystem on Hawaii Island include the understory and subcanopy species *Hedychium coronarium, H. gardnerianum, Juncus effusus, Passiflora tarminiana, Rubus rosifolius, Tibouchina herbacea,* and *T. urvilleana*

(HBMP 2010c; HBMP 2010f; HBMP 2010k). The three species in this ecosystem are also threatened by the nonnative grasses *Axonopus fissifolius, Ehrharta stipoides, Paspalum conjugatum,* and *Setaria palmifolia* (HBMP 2010c; HBMP 2010f; HBMP 2010k). These nonnative plant species pose serious and ongoing threats to the three species that depend on this ecosystem (see *Specific Nonnative Plant Species Impacts* below).

Specific Nonnative Plant Species Impacts

Nonnative plants pose serious and ongoing threats to 14 of the 15 species proposed for listing (all except the anchialine pool shrimp) in this rule throughout their ranges by destroying and modifying habitat. They can adversely impact microhabitat by modifying the availability of light and nutrient cycling processes, and by altering soil-water regimes. They can also alter fire regimes affecting native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat. Alteration of fire regimes clearly represents an ecosystem-level change caused by the invasion of nonnative grasses (D'Antonio and Vitousek 1992, p. 73). The grass life form supports standing dead material that burns readily, and grass tissues have large surface-to-volume ratios and can dry out quickly (D'Antonio and Vitousek 1992, p. 73). The flammability of biological materials is determined primarily by their surface-to-volume ratio and moisture content, and secondarily by mineral content and tissue chemistry (D'Antonio and Vitousek 1992, p. 73). The finest size classes of material (mainly grasses) ignite and spread fires under a broader range of conditions than do woody fuels or even surface litter (D'Antonio and Vitousek 1992, p. 73). The grass life form allows rapid recovery following fire; there is little above-ground structural tissue, so almost all new tissue fixes carbon and contributes to growth (D'Antonio and Vitousek 1992, p. 73). Grass canopies also support a microclimate in which surface temperatures are hotter, vapor pressure deficits are larger, and the drying of tissues more rapid than in forests or woodlands (D'Antonio and Vitousek 1992, p. 73). Thus, conditions that favor fire are much more frequent in grasslands (D'Antonio and Vitousek 1992, p. 73).

Nonnative plants outcompete native plants by growing faster, and some may release chemicals that inhibit the growth of other plants. Nonnative plants may also displace native species by preventing their reproduction, usually by shading and taking up available sites for seedling establishment (Vitousek *et al.* 1987, pp. 224–227). These competitive advantages allow nonnative plants to convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35). The following list provides a brief description of the nonnative plants that pose a threat to 14 of the 15 species (all except the anchialine pool shrimp) proposed for listing here. The Hawaii-Pacific Weed Risk Assessment is cited in many of the brief descriptions of the nonnative plants below. This assessment was created as a research collaboration between the University of Hawaii and the U.S. Forest Service for use in Hawaii and other high Pacific islands (*i.e.,* volcanic in origin, as opposed to low-lying atolls) and is an adaptation of the Australian-New Zealand Weed Risk Assessment protocol developed in the 1990s (Denslow and Daehler 2004, p. 1). The Australian-New Zealand protocol was developed to screen plants proposed for introduction into those countries, while the Hawaii-Pacific Weed Risk Assessment was developed to evaluate species already used in landscaping, gardening, and forestry, and is used to predict whether or not a nonnative plant species is likely to become invasive. Not all nonnative plant species present in Hawaii have been assessed, and information on species invasiveness is lacking or absent from some of the descriptions below. In general, all nonnative plant species displace native Hawaiian plants; here we describe other specific negative impacts of individual alien plant species when known.

- *Andropogon virginicus* (broomsedge) is a perennial bunchgrass native to northeastern America, now naturalized along roadsides and in disturbed dry to mesic forest and shrubland (O'Connor 1999, p. 1,497). Seeds are easily distributed by wind, clothing, vehicles, and feral animals (Smith 1989, pp. 60–69). *Andropogon virginicus* may release allelopathic substances that dramatically decrease native plant reestablishment (Rice 1972, pp. 752–755). This species has become dominant in areas subjected to natural or human-induced fires (Gagne and Cuddihy 1999, p. 77). *Andropogon virginicus* is on the Hawaii State noxious weed list (Hawaii Administrative Rules (H.A.R.) Title 4, Subtitle 6, Chapter 68).
- *Anemone hupehensis* var. *japonica* (Japanese anemone) is native to China, and is naturalized and locally common in open, wet, disturbed areas along roadsides and in wet forest in Hawaii. The species has wind-distributed seeds, and resists grazing because of toxic chemicals that induce vomiting when ingested. It was designated as a high risk invasive species in the Pacific Islands Ecosystems at Risk (PIER) project.
- *Angiopteris evecta* (mule's foot fern) is native throughout much of the South Pacific, including Australia and New Guinea, and has established invasive populations throughout the Hawaiian Islands (Global Invasive Species Database (GISD) 2011a). Rhizomes form a massive, almost spherical trunk, 5 in (12 cm) high and 39 in (100 cm) in diameter, and fronds may grow up to 20 ft (6 m) long and 8 to 10 ft (2.5 to 3 m) broad, allowing this species to form dense stands that displace and shade out native plants (GISD 2011a).
- *Axonopus fissifolius* (carpetgrass) is a pasture grass that forms dense mats with tall foliage. This species does well in soils with low nitrogen levels, and can outcompete other grasses in wet forests and bogs. In addition, *A. fissifolius* outcompetes native plants for moisture, an impact accentuated by drought (Olaa Kilauea Partnership 2007, p. 3). This species is not subject to any major diseases or insect pests, and recovers quickly from fire. The seeds are readily spread by water, vehicles, and grazing animals (O'Connor 1999, pp. 1,500–1,502; Cook *et al.* 2005, p. 4).
- *Buddleia asiatica* (dog tail) is a shrub or small tree that can tolerate a wide range of habitats, forms dense thickets, and is rapidly spreading into wet forest and lava and cinder substrate areas in Hawaii, displacing native vegetation (Wagner *et al.* 1999e, p. 415; PIER 2011a).
- *Casuarina equisetifolia* (ironwood), native to Australia (Wagner *et al.* 1999f, p. 528–529), is a tree 33 to 66 ft (10 to 20 m) tall (Cronk & Fuller 2001, p. 144 *in* PIER 2011b). This species is a pioneer, salt-resistant tree that forms monotypic stands under which little else grows (PIER 2011b). It is thought that the roots and needle litter exude a chemical that kills other plants. Ironwood trees are fire resistant, and the seeds of this species are wind- and water-dispersed, further contributing to its advantage over native species (Staples & Herbst, 2005, p. 229).
- *Clidemia hirta* (Koster's curse), a noxious shrub in the Melastoma family, forms a dense understory, shades out native plants, and prevents their regeneration (Wagner *et al.* 1985, p. 41; Smith 1989, p. 64). All plants in the Melastoma family are on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68).

• *Delairea odorata* (cape ivy), a rapidly growing perennial bushy vine native to South Africa, covers and suppresses growth and germination of native species by carpeting the ground and rooting down at leaf nodes. This species can also grow in the canopy, where it smothers native trees, often to the point of death (Benitez *et al.* 2008, pp. 1–115; PIER 2012a; Weeds of Blue Mountain Bushlands 2011).

• *Digitaria setigera* (East Indian crabgrass) is native to tropical Asia from India to Sri Lanka, and the Pacific Islands. The species propagates by seeds and runners, a single flowering stem produces hundreds of seeds. This species is a serious weed, which was accidently introduced to Hawaii and first collected around 1864.

• *Ehrharta stipoides* (meadow rice grass) is a grass that creates a thick mat in which other species cannot regenerate; its seeds are easily dispersed by awns (slender, terminal bristle-like process found at the spikelette in many grasses) that attach to fur or clothing (U.S. Army Garrison 2006, p. 2–1–20).

• *Erigeron karvinskianus* (daisy fleabane) is a sprawling, perennial herb that reproduces and spreads rapidly by stem layering and regrowth of broken roots to form dense mats. This species crowds out and displaces ground-level plants (Weeds of Blue Mountains Bushland 2008).

• *Falcataria moluccana* (albizia), native to Moluccas, New Guinea, New Britain, and the Solomon Islands, is a tree that can reach up to 131 ft (40 m) tall with wide-spreading branches. Albizia is commonly used as a shade plant for coffee plants in plantations in many parts of the world. This species grows very rapidly. Albizia can quickly establish in disturbed and nondisturbed mesic to wet areas (PIER 2011c; GISD 2011b). Its rapid growth habit enables it to outcompete slow-growing native trees by reducing light availability, and its abundant, high-quality litter alters nutrient dynamics in the soil (GISD 2011b). Increased nitrogen in the soil may favor nonnative plant species (GISD 2011b).

• *Grevillea* spp. are medium to large evergreen trees native to Australia. Over two million *Grevillea robusta* trees were planted in the Hawaii Islands between 1919 and 1959, in an effort to reduce erosion and to provide timber. The leaves produce an allelopathic substance that inhibits the establishment of all other plant species underneath the canopy (Smith 1985, p. 191). This species has been documented in dry and moist forests, and open areas in Hawaii (Smith 1985, p. 191). *Grevillea banksii* is similar to *G. robusta* in most features and is considered a major infestation in the Kau district on Hawaii Island.

• *Hedychium* spp. (ginger) are native to India and the Himalayas (Nagata 1999, p. 1,623; Motooka *et al.* 2003a). *Hedychium gardnerianum* (kahili ginger) and *H. coronarium* (white ginger) are both showy gingers introduced for ornamental purposes. *Hedychium gardnerianum* was first collected in 1954, at HVNP (Wester 1992, pp. 99–154; Nagata 1999, p. 1,623). This species grows over 3 ft (1 m) tall in open, light environments; however it will readily grow in full shade beneath a forest canopy (Smith 1985, pp. 191–192). It forms vast, dense colonies, displacing other plant species, and reproduces by rhizomes where already established. The conspicuous, fleshy, red seeds are dispersed by fruit-eating birds as well as humans. *Hedychium coronarium* is a herbaceous perennial that grows 3 to 7 ft (1 to 2 m) tall and favors wet habitats (GISD 2011c; PIER 2012b). This species is shade tolerant but can grow in exposed full sun (Csurhes and Hannan-Jones 2008, p. 7). Similar to *H. gardnerianum,* the creeping growth habit of *H. coronarium* overwhelms low-growing native plants, and this species is difficult to control due to the presence of rhizomes (Csurhes and Hannan-Jones 2008, p. 7; GISD 2011c). In addition to outcompeting native plants, *Hedychium* spp. reduce the amount of nitrogen in the *Metrosideros* forest canopy in Hawaii, thus impacting the availability of nutrients for native plants (Asner and Vitousek 2005, in litt.; Jordan *et al.* 2008, pp. 177–190). It may also block stream edges, altering water flow (GISD 2011c), which can subsequently lead to watershed degradation and decline in moisture regimes that are necessary to support native plants.

• *Heterotheca grandiflora* (telegraph weed) is an annual or biennial herb native to California and Mexico, as well as a common weed of dry, disturbed areas on Hawaii Island (PIER 2011d). This species is an opportunistic colonizer that grows quickly, forms dense stands, and inhibits recruitment of native plants (Csurhes 2009, p. 2; PIER 2011d).

• *Juncus effusus* (Japanese mat rush) is a perennial herb widely distributed in temperate regions and naturalized in Hawaii in ponds, streams, and open boggy sites. It was brought to Hawaii as a source of matting material, but grew too slowly to be of commercial value (Coffey 1999, p. 1,453). This plant spreads by seeds and rhizomes, and forms dense mats that crowd-out native plants (United States Department of Agriculture—Agricultural Research Division—National Genetic Resources Program (USDA–ARS–NGRP) 2011—*Germplasm Resources Information Network (GRIN) Online Database;* USDA–Natural Resources Conservation Service (NRCS) 2012a—*Plants database*).

• *Juncus ensifolius* (dagger-leaved rush), a perennial herb native to the western United States, is naturalized in Hawaii and occurs in standing water of marshy areas (Coffey 1999, p. 1,453). This weedy colonizer can tolerate environmental stress and outcompete native species (USDA–NRCS 2012b—*Plants Database*).

• *Juncus planifolius* (bog rush) is a perennial herb that is naturalized in Hawaii in moist, open, disturbed depressions on margins of forests and in bogs (Coffey 1999, pp. 1,453–1,454). This species forms dense mats and has the potential to displace native plants by preventing establishment of native seedlings (Medeiros *et al.* 1991, pp. 22–23).

• *Lantana camara* (lantana), a malodorous, branched shrub up to 10 ft (3 m) tall, was brought to Hawaii as an ornamental plant. Lantana is aggressive, thorny, and forms thickets, crowding out and preventing the establishment of native plants (Davis *et al.* 1992, p. 412; Wagner *et al.* 1999g, p. 1,320).

• *Leucana leucocephala* (koa haole), a shrub native to the neotropics, is a nitrogen-fixer and an aggressive competitor that often forms the dominant element of the vegetation in low-elevation, dry, disturbed areas in Hawaii (Geesink *et al.* 1999, pp. 679–680).

• Plants in the genus *Melastoma* are ornamental shrubs native to southeast Asia and all species are on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68). *Melastoma* species have high germination rates, rapid growth, early maturity, ability of fragments to root, possible asexual reproduction, and efficient seed dispersal (especially by birds that are attracted by copious production of berries) (Smith 1985, p. 194; University of Florida Herbarium 2008, pp. 1–2). These characteristics enable the plants to be aggressive competitors in Hawaiian ecosystems.

• *Melinis repens* (natal redtop), a perennial grass native to Africa, is now widely naturalized in the tropics and in Hawaii. It invades disturbed dry areas from coastal regions to subalpine forest (Gould 1977–*Desert Museum database;* O'Connor 1999, p. 1,588). Dense stands of this species can contribute to recurrent fires (Gould 1977–*Desert Museum database*).

• *Miconia calvescens* (miconia), a tree native to the neotropics, first appeared on Oahu and the island of Hawaii as an introduced garden plant, and has escaped from cultivation (Almeda 1999, p. 903). Miconia is remarkable for its 2- to 3-ft (70-cm) long, dark purple leaves. It reproduces in dense shade, eventually shading out all other plants to form a monoculture. A single mature plant produces millions of seeds per year, which are spread by birds, ungulates, and humans (Motooka *et al.* 2003b). According to the Hawaii Weed Risk Assessment for *M. calvescens,* this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2010). This species, as well all plants in the Melastoma family, are on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68).

• *Omalanthus populifolius* (Queensland poplar) is a large shrub native to Australia that is now naturalized in disturbed mesic forests up to 3,280 ft (1,000 m) elevation on Hawaii Island (Starr *et al.* 2003, in litt.). Seeds of this species are spread by birds, water, and machinery-such as roadside mowers (PIER 2011e). *Omalanthus populifolius* has the potential to colonize entire gulches, displacing and inhibiting the regeneration of native plants (Oppenheimer 2004, p. 11).

• *Paspalum conjugatum* (Hilo grass) is a perennial grass that is found in wet habitats and forms a dense ground cover. Its small, hairy seeds are easily transported on humans and animals, or are carried by the wind through native forests, where it establishes and displaces native vegetation (Tomich 1986, p. 125; Cuddihy and Stone 1990, p. 83; Motooka *et. al.* 2003c; PIER 2008a).

• *Passiflora edulis* (passion fruit), native to South America, is a vigorous vine that can reach up to 49 ft (15 m) in length. In Hawaii, its seeds are spread by feral pigs, and it can be found in agricultural areas, natural forests, disturbed sites, and shrublands (GISD 2012a). *Passiflora edulis* overgrows and smothers the forest canopy, and its fruit encourages rooting and trampling by feral pigs.

• *Passiflora tarminiana* (banana poka), a vine native to South America, is widely cultivated for its fruit (Escobar 1999, pp. 1,010–1,012). First introduced to Hawaii in the 1920s, it is now a serious pest in mesic forest, where it overgrows and smothers the forest canopy. Seeds are readily dispersed by humans, birds, and feral pigs (La Rosa 1992, pp. 281–282). Fallen fruit encourage rooting and trampling by pigs (Diong 1982, pp. 157–158). Field releases of biocontrol agents to control the spread of this species have not been successful to date.

• *Pennisetum setaceum* (fountain grass) is a grass that is an aggressive colonizer that outcompetes most native species by forming widespread, dense, thick mats. This species is also fire-adapted and burns swiftly and hot, causing extensive damage to the surrounding habitat (O'Connor 1999, p. 1,581). Fountain grass occurs in dry, open places; barren lava flows; and cinder fields, and it is estimated to cover hundreds of thousands of acres on the island of Hawaii (O'Connor 1999, p. 1,578; Fox 2011, in litt.).

• *Pluchea* spp. are 3- to 6-ft (1- to 2-m) tall, fast-growing shrubs that form thickets in dry habitats and can tolerate saline conditions. *Pluchea carolinensis* (sourbush) is native to Mexico, the West Indies, and South America (Wagner *et al.* 1999h, p. 351), and *Pluchea indica* (Indian fleabane), is native to southern Asia (Wagner *et al.* 1999h, p. 351). The seeds are wind-dispersed (Francis 2004, pp. 577–579). Both species are adapted to a wide variety of soils and sites, tolerate excessively well-drained to poorly-drained soil conditions, the full range of soil textures, acid and alkaline reactions, salt and salt spray, and compaction. They quickly invade burned areas, but being early successional, they are soon replaced by other species. These adaptive capabilities increase the species' competitive abilities over native plants.

• *Polygonum punctatum* (water smartweed), native to North America, South America, and the West Indies, is a naturalized, aquatic species found along streambeds, in wet areas, in running or standing water, and in disturbed forest sites on Hawaii Island (Wagner *et al.* 1999i, p. 1064). This species is fast-growing but short-lived, and has long-lived seeds and allelopathic properties (Gutscher 2007, in litt.). Loh and Tunison (1998, p. 5) found that in pig-disturbed sites, *P. punctatum* expanded from 25 percent to 62.5 percent cover in 2 years. The combination of rapid growth, long-lived seeds, and allelopathic properties allows this species to form dense patches that prohibit the establishment of native plants after disturbance events.

• *Prosopis pallida* (kiawe), a large tree up to 30 ft (9 m) tall, was introduced to Hawaii from northwestern South America in 1828, and its seeds were used as fodder for ranch animals (Motooka *et al.* 2003d). This species is now a dominant component of the vegetation in low-elevation disturbed sites, and it is well adapted to dry habitats. It overshadows other vegetation and has deep tap roots that significantly reduce available water for native dryland plants. This plant fixes nitrogen and can outcompete native species (Geesink *et al.* 1999, pp. 692–693; Obiri 2011, p. 421). This species is on the U.S. Federal noxious weed list (USDA–NRCS 2012c–*Plants database*).

• *Psidium cattleianum* (strawberry guava) is a tall shrub or tree that forms dense stands in which few other plants can grow, displacing native vegetation through competition. The fruit is eaten by feral pigs and birds that disperse the seeds throughout the forest (Smith 1985, p. 200; Wagner *et al.* 1985, p. 24).

• *Rubus argutus* (prickly Florida blackberry) is a prickly bramble with long-arching stems, and reproduces both vegetatively and by seed. It readily sprouts from underground runners, and is quickly spread by frugivorous (fruit-eating) birds (Tunison 1991, p. 2; Wagner *et al.* 1999j, p. 1,107; U.S. Army Garrison 2006, pp. 2–1–21–2–1–22). This species, which displaces native vegetation through competition, is on the Hawaii State noxious weed list (H.A.R. Title 4, subtitle 6, Chapter 68).

• *Rubus ellipticus* (yellow Himalayan raspberry), native to India, is a prickly bramble with long arching stems up to 13 ft (4 m) long that smother smaller plants, including native species. This species occurs in wet areas in the Volcano and Laupahoehoe areas on Hawaii Island (Motooka *et al.* 2003e).

• *Rubus rosifolius* (thimbleberry) is an erect to trailing shrub that forms dense thickets and outcompetes native plant species. It easily reproduces from roots left in the ground, and seeds are spread by birds and feral animals (GISD 2008; PIER 2008b).

• *Schefflera actinophylla* (octopus tree) is a tree native to Australia and New Guinea, is found in low-elevation, disturbed and undisturbed, mesic and wet habitats in Hawaii (Lowry 1999, p. 232; Motooka *et al.* 2003f). This species is shade tolerant and can spread deep into undisturbed forests, forming dense thickets, as its numerous seeds are readily dispersed by birds (Motooka *et al.* 2003f; PIER 2012c). *Schefflera actinophylla* grows epiphytically, strangling its host tree (PIER 2012c).

• *Schinus terebinthifolius* (christmasberry, also known as Brazilian pepper), native to South America, forms dense thickets in all habitats, and its red berries are attractive to and dispersed by birds (Smith 1989, p. 63). *Schinus* seedlings grow very slowly and can survive in dense shade, exhibiting vigorous growth when the canopy is opened after a disturbance (Brazilian Pepper Task Force 1997). Because of these attributes, *S. terebinthifolius* is

able to displace native vegetation through competition.

• *Senecio madagascariensis* (Madagascar fireweed), native to Madagascar and South Africa, is a short-lived perennial plant that is on the State of Hawaii's noxious weed list (PIER 2011f). Each *S. madagascariensis* plant can produce abundant seeds each year that are easily distributed by wind (The State of Queensland, Department of Employment, Economic Development and Innovation 2011, pp. 1–4). This combination of long-range dispersal of its seeds and its allelopathic properties enables this species to successfully outcompete native plants (Daehler 2011, in litt.)

• *Setaria palmifolia* (palmgrass), native to tropical Asia, was first collected on Hawaii Island in 1903 (O'Connor 1999, p. 1,592). A large-leafed perennial herb, this species reaches approximately 6.5 ft (2 m) in height at maturity, and shades out native vegetation. Palmgrass is resistant to fire and recovers quickly after being burned (Cuddihy and Stone 1990, p. 83).

• *Sphaeropteris cooperi* (Australian tree fern) is a tree fern native to Australia that was brought to Hawaii for use in landscaping (Medeiros *et al.* 1992, p. 27). It can achieve high densities in native Hawaiian forests, grows up to 1 ft (0.3 m) in height per year (Jones and Clemesha 1976, p. 56), and can displace native species. Understory disturbance by feral pigs facilitates the establishment of this species (Medeiros *et al.* 1992, p. 30), and it has been known to spread over 7 mi (12 km) through windblown dispersal of spores from plant nurseries (Medeiros *et al.* 1992, p. 29).

• *Tibouchina* species are herbs, shrubs, or trees native to South America. All members of this genus are on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68). *Tibouchina herbacea* (glorybush), an herb or shrub up to 3 ft (1 m) tall, is native to southern Brazil, Uruguay, and Paraguay. In Hawaii, it is naturalized and abundant in disturbed mesic to wet forest on the islands of Molokai, Lanai, Maui, and Hawaii (Almeda 1999, p. 915). It forms dense thickets, crowding out all other plant species and inhibits regeneration of native plants (Motooka *et al.* 2003g). *Tibouchina urvilleana* (princess flower), a shrub or small tree up to 3-to 14-ft (1-to 4-m) tall, is native to southern Brazil (Almeda 1999, p. 916). Naturalized on Kauai, Oahu, Maui, and Hawaii, this species forms dense thickets in disturbed areas of wet forest, crowding out all other plant species and inhibiting regeneration of native plants.

• *Ulex europaeus* (gorse), a woody legume up to 12 ft (4 m) tall and covered with spines, is native to Western Europe (Geesink *et al.* 1999, pp. 715–716). It is cultivated as a hedge and fodder plant, and was inadvertently introduced to Hawaii before 1910, with the establishment of the wood industry (Tulang 1992, pp. 577–583; Geesink *et al.* 1999, pp. 715–716). Gorse spreads numerous seeds by explosive opening of the pods (Mallinson 2011, pp. 1–2). It can rapidly form extensive dense and impenetrable infestations, and competes with native plants, preventing their establishment. Dense patches can also present a fire hazard (Mallinson 2011, pp. 1–2). Over 20,000 ac (8,094 ha) are infested by gorse on the island of Hawaii, and over 15,000 ac (6,070 ha) are infested on Maui (Tulang 1992, pp. 577–583). Gorse is on the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68).

Habitat Destruction and Modification by Fire

Fire is an increasing, human-exacerbated threat to native species and native ecosystems 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). It is believed that prior to human colonization, fuel was sparse and inflammable in wet plant communities and seasonally flammable in mesic and dry plant communities. The primary ignition sources were volcanism and lightning (Baker *et al.* 2009, p. 43). Natural fuel beds were often discontinuous, and rainfall in many areas on most islands was, and is, moderate to high. 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. Pasturage and ranching, in particular, created high fire-prone areas of nonnative grasses and shrubs (D'Antonio and Vitousek 1992, p. 67). Although fires were historically infrequent in mountainous regions, extensive fires have recently occurred in lowland dry and lowland mesic areas, leading to grass-fire cycles that convert forest to grasslands (D'Antonio and Vitousek 1992, p. 77).

Because several Hawaiian plants show some tolerance of fire, Vogl proposed that naturally occurring fires may have been important in the development of the original Hawaiian flora (Vogl 1969 in Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, p. 394). However, Mueller-Dombois (1981 in Cuddihy and Stone 1990, p. 91) points out that most natural vegetation types in Hawaii would not carry fire before the introduction of alien grasses, and Smith and Tunison (1992, p. 396) state that native plant fuels typically have low flammability. Because of the greater frequency, intensity, and duration of fires that have resulted from the introduction of nonnative plants (especially grasses), fires are now 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).

Fire represents a threat to four of the species proposed for listing (the plants *Bidens micrantha* ssp. *ctenophylla, Phyllostegia floribunda,* and *Schiedea hawaiiensis;* and the picture-wing fly) found in the lowland dry, lowland mesic, lowland wet, montane dry, and montane mesic ecosystems addressed in this proposed rule (see Table 3). Fire can destroy dormant seeds of these species as well as plants themselves, even in steep or inaccessible areas. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimate conditions favorable to alien plants. Alien plant species most likely to be spread as a consequence of fire are those that produce a high fuel load, are adapted to survive and regenerate after fire, and 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 (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 shifts the competitive balance toward alien species (National Park Service (NPS) 1989, in Cuddihy and Stone 1990, p. 93). On a post-burn survey at Puuwaawaa on Hawaii Island, an area of native *Diospyros* forest with undergrowth of the nonnative grass *Pennisetum setaceum,* Takeuchi noted

that ''no regeneration of native canopy is occurring within the Puuwaawaa burn area'' (Takeuchi 1991, p. 2). Takeuchi (1991, pp. 4, 6) also stated that ''burn events served to accelerate a decline process already in place, compressing into days a sequence that would ordinarily take decades,'' and concluded that in addition to increasing the number of fires, the nonnative *Pennisetum* acted to suppress the establishment of native plants after a fire.

For decades, fires have impacted rare or endangered species and areas previously designated or proposed for critical habitat designation in this rule (HDOFAW 2002, pp. 1, 4–6; Dayton 2007, in litt.; Joint Fire Science Program (JFSP) 2009, pp. 1–12; Weise *et al.* 2010, pp. 199–220; Kakesako 2011, in litt.). On the island of Hawaii, wildfires are caused primarily by lava flows, humans, and lightning, all of which are exacerbated by severe drought and nonnative grasses (*e.g., Pennisetum setaceum*) (Dayton 2007, in litt.; JFSP 2009, pp. 1–6; Armstrong and Media 2010, in litt.; Weise *et al.* 2010, pp. 199–216; Adkins *et al.* 2011, p. 17; Hawaii County Major.com–accessed September 7, 2011; Burnett 2010, in litt.; KHON2, June 6, 2011). Between 2002 and 2003, three successive lava-ignited wildfires in the east rift zone of HVNP affected native forests in lowland dry, lowland mesic, and lowland wet ecosystems (JFSP 2009, p. 3), cumulatively burning an estimated 11,225 ac (4,543 ha) (Wildfire News, June 9, 2003; JFSP 2009, p. 3). These fires destroyed over 95 percent of the canopy cover in the burned areas and encroached upon rainforests (*i.e.,* forests in the lowland wet ecosystem) that were previously thought to have low susceptibility or even be relatively immune to wildfires (JFSP 2009, pp. 2–3; Wildfire News, June 9, 2003). After the fires, nonnative ferns were reported in the higher elevation rainforests where they had not previously been observed, and were believed to inhibit the ability of the dominant native *Metrosideros polymorpha* (ohia) trees to recover (JFSP 2003, pp. 1–2). Nonnative flammable grasses also spread in the area, under the dead ohia trees (Ainsworth 2011, in litt.), increasing the risk of fire in surrounding native forested areas. In 2011, the Napau Crater wildfire, ignited by an eruption at the Kamoamoa fissure in HVNP, consumed over 2,076 ac (840 ha), including 100 ac (40 ha) of the 2,750 ac (1,113 ha) east rift zone's special ecological area (Ainsworth 2011, in litt.; Kakesako 2011, in litt.). Special ecological areas (SEA) are HVNP's most intact and intensively managed natural systems (Tunison and Stone 1992, pp. 781–798). The plant *Phyllostegia floribunda,* proposed for listing in this rule, is known from the east rift zone's Napau Crater, in the lowland wet ecosystem (Belfield 1998, pp. 9, 11–13, 23; Pratt 2007b, in litt.; HBMP 2010h). In addition, historical records report that the plant *Cyanea tritomantha,* proposed for listing in this rule, also occurred in this area, in the same ecosystem; however the last survey that reported this occurrence was over 25 years ago (Lamoureux *et al.* 1985, pp. 105, 107–108; HBMP 2010h).

Fire is a threat to the Kona (leeward) side of Hawaii Island. In the past 50 years, there have been three wildfires that burned 20,000 ac (8,094 ha) or more: (1) 20,000 ac (8,094 ha) burned at Puuwaawaa Ranch in 1985; (2) 20,000 acres (8,094 ha) burned at PTA in 1994; and (3) 25,000 ac (10,117 ha) burned in Waikoloa in 2005 (Thompson 2005, in litt.). The only known occurrence (25 to 40 individuals) of the plant *Schiedea hawaiiensis,* proposed for listing in this rule, is found on the U.S. Army's Pohakuloa Training Area (PTA), and the 1994 fire burned to within 2 mi (4 km) of this species (U.S. Army Garrison 2006, p. 34; Evans 2011, in litt.). Although this fire may seem relatively distant from *S. hawaiiensis,* wildfires can travel from 4 to 8 miles per hour (mph) (6.5 to 13 kilometers per hour (kph)), and burn 2.5 ac (1 ha) to 6 ac (2.5 ha) per minute (the equivalent of 6 to 8 football fields per minute), depending on the fuel type, wind, and slope of land (Burn Institute 2009, p. 4). In 2011, a 500-ac (202-ha) wildfire ignited by lightning and fueled by nonnative *Pennisetum setaceum* burned within the State's Puu Anahulu Game Management Area (GMA) and encroached within a quarter-mile (0.5 km) of PTA (KHON2, June 6, 2011). The Puu Anahulu GMA lies just 3 mi (5 km) northwest of the only known occurrence of *S. hawaiiensis* in the montane dry ecosystem. Also in 2011, a 120-ac (49-ha) wildfire broke out near Kaiminani Street (Jensen 2011, in litt.), just north of Hina Lani Road, in the lowland dry ecosystem, where the largest occurrence of the plant species *Bidens micrantha* ssp. *ctenophylla,* proposed for listing in this rule, is found. In addition, the threat of fire to this species is increased by its occurrence in areas bordered by residential developments, schools, and roads, which provide numerous ignition sources from the high volume of human traffic. A recent fire at the Villages of Laiopua subdivision at Kealakehe, known to have been intentionally set, threatened to burn an area that supports *B. micrantha* ssp. *ctenophylla* (Knoche 2012, in litt.). Although no *B. micrantha* ssp. *ctenophylla* individuals were burned, the immediate proximity of the fire to occupied and unoccupied habitat for this species demonstrates the threat of fire to *B. micrantha* ssp. *ctenophylla* in the lowland dry ecosystem at Kealakehe.

Fire is also a threat to the picture-wing fly, proposed for listing in this rule, at one of its two known locations (the Manuka NAR) due to the ongoing extreme drought conditions in this region and the resulting accumulation of dead trees (*i.e.,* fuel load), in the lowland mesic and montane mesic ecosystems (Magnacca 2011b, pers. comm.).

Throughout the Hawaiian Islands, increased fuel loads and human-ignited fires caused the average acreage burned to increase five-fold from the early 1900s (1904 to 1939) to the mid-1900s (1940 to 1976) (La Rosa *et al.* 2008, p. 231). In HVNP, fires were three times more frequent and 60 times larger, on average, from the late 1960s to 1995, when compared to data spanning 1934 to the late 1960s (Tunison *et al.* 2001 *in* La Rosa *et al.* 2008, p. 231). The historical fire regimes have been altered from typically rare events to more frequent events, largely a result of continuous fine fuel loads associated with the presence of the fire-tolerant, nonnative fountain grass and the grass-fire feedback cycle that promotes its establishment (La Rosa *et al.* 2008, pp. 240–241; Pau 2009, in litt.). Extreme drought conditions are also contributing to the number and intensity of the wildfires on Hawaii Island (Armstrong and Media 2010, in litt.; Loh 2010, in litt.). In addition, the combination of El Niño conditions (see ''Habitat Destruction and Modification by Climate Change,'' below) in the Pacific, a half-century decline in annual rainfall, and intermittent dry spells have fueled wildfires throughout all of the main Hawaiian Islands (Marcus 2010, in litt.). The entire State is experiencing dry conditions, but Hawaii Island appears to be significantly impacted (Kodama 2010, in litt.; USDA–FSA 2012, in litt.).

Fire is a threat to three plant species (*Bidens micrantha* ssp. *ctenophylla, Phyllostegia floribunda,* and *Schiedea hawaiiensis*), and the picture-wing fly (*Drosophila digressa*), reported from Hawaii Island's lowland dry, lowland mesic, lowland wet, montane dry, and montane mesic ecosystems, because individuals of these species or their habitat are located in or near areas that were burned in previous fires or in areas at risk for fire due to volcanic activity,

drought, or the presence of highly flammable nonnative grasses and shrubs.

Habitat Destruction and Modification by Hurricanes

Hurricanes adversely impact native Hawaiian terrestrial habitat and exacerbate the impacts resulting from other threats such as habitat degradation by ungulates and competition with nonnative plants. They do this by destroying native vegetation, opening the canopy and thus modifying the availability of light, and creating disturbed areas conducive to invasion by nonnative pest species (see ''*Specific Nonnative Plant Species Impacts,*'' above) (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 539–540). Because many Hawaiian plant and animal species persist in low numbers and in restricted ranges, natural disasters, such as hurricanes, can be particularly devastating (Mitchell *et al.* 2005a, pp. 3–4).

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 mph (161 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). Competition with nonnative plants is a threat to 9 of the 10 ecosystems that support all 13 plant species and the picture-wing fly (*Drosophila digressa*), proposed for listing in this rule, as described above in ''*Habitat Destruction and Modification by Nonnative Plants.*'' Nonnative plants also compete with the native host plants of the picture-wing fly.

In addition to the habitat destruction and nonnative plant introduction resulting from hurricanes, high winds and intense rains from hurricanes can directly kill individual picture-wing flies to the point of decimating an entire population (Carson 1986, p. 7; Foote and Carson 1995, pp. 369–370). High winds can also dislodge fly larvae from their host plants, destroy host plants, and expose the fly larvae to predation by nonnative yellowjacket wasps (see ''*Factor C. Disease or Predation,*'' below) (Carson 1986, p. 7; Foote and Carson 1995, p. 371).

Since 1950, 13 hurricanes have passed near but not over Hawaii Island. Eleven of these hurricanes brought heavy rain, strong wind, or high surf to the island, which caused erosion, flash floods, and other damage (Fletcher III *et al.* 2002, pp. 11–17; National Weather Service *et al.* 2010, pp. 1–22). In 1994, tropical depression 1C brought over 14 in (36 cm) of rain in just a few days to windward sections of Hawaii Island (National Oceanic Atmospheric Administration (NOAA) 1994, pp. 4–5; National Weather Service *et al.* 2010, pp. 4–5).

Although there is historical evidence of only one hurricane (1861) that approached from the east and impacted the islands of Maui and Hawaii (Businger 1998, p.3), damage from future hurricanes could further decrease the remaining native plant-dominated habitat areas that support the 13 plant species, and the picture-wing fly proposed for listing in this rule in 9 of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff).

Habitat Destruction and Modification Due to Rockfalls, Treefalls, Landslides, Heavy Rain, Erosion, and Drought

Rockfalls, treefalls, landslides, heavy rain, and erosion damage and destroy individual plants, destabilize substrates, and alter hydrological patterns that result in changes to native plant and animal communities. In the open sea near Hawaii, rainfall averages 25 to 30 in (635 to 762 mm) per year, yet the islands may receive up to 15 times this amount in some places, caused by orographic features (physical geography of mountains) (Wagner *et al.* 1999a, pp. 36–44). During storms, rain may fall at 3 in (76 mm) per hour or more, and sometimes may reach nearly 40 in (1,000 mm) in 24 hours, causing destructive flash-flooding in streams and narrow gulches (Wagner *et al.* 1999a, pp. 36–44). Due to the steep topography of some areas on Hawaii Island where 4 of the 13 plants proposed for listing in this rule remain, erosion and disturbance caused by introduced ungulates exacerbates the potential for rockfalls, treefalls, and landslides, which in turn are a threat to native plants. Such events have the potential to eliminate all individuals of a population, or even all populations of a species, resulting in a greater likelihood of extinction due to the lack of redundancy and resilience of the species caused by their reduced numbers and geographic range.

Rockfalls, treefalls, landslides, heavy rain, and subsequent erosion are a threat to four of the plant species (*Bidens hillebrandiana* ssp. *hillebrandiana, Cyanea marksii, Cyanea tritomantha,* and *Cyrtandra wagneri*) addressed in this proposed rule (Lorence and Perlman 2007, p. 359; PEPP 2010, p. 52; Bio 2011, pers. comm.). Monitoring data from PEPP and other field biologists and surveyors suggest that these four species are threatened by these events as they are found in landscape settings susceptible to these events (*e.g.,* lava tubes, stream banks, steep slopes and cliffs). Field survey data presented by PEPP and other field biologists document that individuals of *Bidens hillebrandiana* ssp. *hillebrandiana* that occur on steep sea cliffs are threatened by rockfalls and landslides, 1 of the 27 known individuals of *Cyanea marksii* is threatened by falling rocks and landslides, and individuals of *Cyanea tritomantha* are threatened by treefalls (PEPP 2007, p. 52; Bio 2011, pers. comm.). Field survey data presented by Lorence and Perlman (2007, p. 359) suggest that heavy rains and subsequent erosion threaten the only known location of *Cyrtandra wagneri* on a stream bank in the Laupahoehoe NAR. Since *Cyrtandra wagneri* is currently only known from a total of eight individuals along the steep banks of Kilau Stream, heavy rains and erosion could lead to near extirpation or even extinction of this species by direct destruction of the individual plants, mechanical damage to individual plants that could lead to their death, or destabilization of the stream bank habitat leading to additional erosion.

Two plant species, *Bidens micrantha* ssp. *ctenophylla* and *Schiedea hawaiiensis,* and the picture-wing fly (*Drosophila digressa*), proposed for listing in this rule may also be affected by habitat loss or degradation associated with droughts, which are not uncommon in the Hawaiian Islands (HDLNR 2009, pp. 1–6; Hawaii State Civil Defense 2011, pp. 14–1–14–12; U.S. National Drought Mitigation Center (NDMC) 2012—*Online Archives*). Between 1901 and 2011, there have been at least 18 serious or severe droughts that have impacted Hawaii Island, including the current drought that began in 2008 and has led to the island's first ever drought exceptional designation (the highest drought level rating on the scale) (between March and December of 2010) (HDLNR 2009, pp. 1–6; Hawaii Civil Defense 2011, pp. 14–1–14–12). According to the NDMC's drought rating system, most of the island has been rated as in severe drought since 2008, with extreme drought ratings intermittently in some

portions of the island (NDMC 2012—*Online Archives*). Giambelluca *et al.* (1991, pp. 3–4) compiled descriptive accounts of drought throughout the Hawaiian Islands between 1860 and 1986, and found that 87 episodes of drought occurred on Hawaii Island between those years, although some of those episodes occurred for periods as short as one month. The 2011 winter weather system brought periods of heavy rain from Kauai to Maui; however these systems weakened or moved away from Hawaii Island, leaving the typically wet windward slopes of the island under moderate drought conditions (NOAA 2011—*Online Climate Data Center*). The entire windward side of Hawaii Island is currently in an abnormally dry state (NDMC 2011—*Online Archives;* NDMC 2012—*Online Archives*).

Pohakuloa Training Area (the location of the only known individuals of the plant *Schiedea hawaiiensis*) was rated as experiencing extreme drought during the spring of 2011 (Hawaii State Civil Defense 2011, pp. 14–1–14–12), and in 2010, as well as most of north and south Kona. North Kona, including the lowland dry ecosystem that supports the largest occurrence of the plant *Bidens micrantha* ssp. *ctenophylla,* has been experiencing conditions of extreme to severe drought over the past few years. One of the two known extant populations of the picture-wing fly (*Drosophila digressa*) is found in the lowland mesic ecosystem in south Kona, in an area that has also experienced extreme to severe drought over the past few years. Drought alters the decay processes of the picture-wing fly's host plants and the entire plant community on which the fly depends. Monitoring data collected in HVNP during a drought period between 1981 and 1982 suggest that drought was associated with a reduction in the number of picture-wing flies one year following the drought (Carson 1986, pp. 4, 7). In addition, the ongoing drought in south Kona has resulted in an increasing accumulation of dead trees in the Manuka NAR, which increases the fuel load and threat of wildfires in the area where one of the two known occurrences of the picture-wing fly occurs (Magnacca 2011b, pers. comm.).

Severe episodes of drought cannot only directly kill individuals of a species or entire populations, but drought frequently leads to an increase in the number and intensity of forest and brush fires (see ''Habitat Degradation and Modification by Fire,'' above), causing a reduction of native plant cover and habitat, an increase in nonnative plant and animal species, and a reduction in availability of host plants for the picture-wing fly (Giambelluca *et al.* 1991, p. v; D'Antonio and Vitousek 1992, pp. 77–79; HDLNR 2009, pp. 1–6; Hawaii Civil Defense 2011, pp. 14–1–14–12). Ecosystems altered by drought and subsequent fires are further altered by the introduction of nonnative species that outcompete native species for basic life-cycle requirements (see ''Habitat Destruction and Modification by Nonnative Plants,'' above). To further exacerbate the situation, nonnative ungulate patterns may be altered as observed on Maui, where recent episodes of drought have driven axis deer (*Axis axis*) farther into urban and forested areas for food, increasing their negative impacts to native vegetation from herbivory and trampling (Waring 1996, in litt., p. 5; Nishibayashi 2001, in litt.). Due to the recent widespread increase in frequency and intensity of drought on the island of Hawaii, even the wettest forests on the windward side of the island may be threatened by long-term drought (JFSP 2009, pp. 1–12). Prolonged periods of water deprivation caused by drought can also lead to the direct death of the remaining individuals of the plants *Schiedea hawaiiensis* and *Bidens micrantha* ssp. *ctenophylla,* and the picture-wing fly, possibly leading to extinction of one or more of these species. Drought is a direct threat to two of the plant species (*Bidens micrantha* ssp. *ctenophylla* and *Schiedea hawaiiensis*), and the picture-wing fly (*Drosophila digressa*), proposed for listing in this rule, as discussed above.

Habitat Destruction and Modification by Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (Le Treut *et al.* 2007, pp. 93–127). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (Le Treut *et al.* 2007, pp. 93–127). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Climate change will be a particular challenge for the conservation of biodiversity because the introduction and interaction of additional stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *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. Currently, there are no climate change studies that specifically address impacts to the Hawaii Island ecosystems discussed here or the 15 species proposed for listing that are associated with these ecosystems. Based on the best available information, climate change impacts could lead to the loss of native species that comprise the communities in which the 15 species occur (Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Allen *et al.* 2010, pp. 660–662; Sturrock *et al.* 2011, p. 144; Towsend *et al.* 2011, p. 15; Warren 2011, pp. 221–226). In addition, weather regime changes (droughts, floods) will likely result from increased annual average temperatures related to more frequent El Niño episodes in Hawaii (Giambelluca *et al.* 1991, p. v). 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 weather cycle (a disruption of the ocean atmospheric system in the tropical Pacific having important global consequences for weather and climate) might change (State of Hawaii 1998, pp. 2–10). The 15 species proposed for listing may be especially vulnerable to extinction due to anticipated environmental changes that may result from global climate change, due to their small population size and highly restricted ranges. Environmental changes that may affect these species are expected to include habitat loss or alteration and changes in disturbance regimes (*e.g.,* storms and hurricanes).

Climate Change and Ambient Temperature

The average ambient air temperature (at sea level) is projected to increase by about 4.1 degrees Fahrenheit (°F) (2.3 degrees Centigrade (°C)) with a range of 2.7 °F to 6.7 °F (1.5 °C to 3.7 °C) by 2100 worldwide (Trenberth *et al.* 2007, pp. 235–336). These changes would increase the monthly average temperature of the Hawaiian Islands from the current value of 74 °F (23.3 °C) to between 77 °F and 86 °F (25 °C and 30 °C). Historically, temperature has been rising over the last 100 years, with the greatest increase after 1975 (Alexander *et al.* 2006, pp. 1–22; Giambelluca *et al.* 2008, p. 1). The rate of increase at low elevation (0.16 °F; 0.09 °C) per decade is below the observed global temperature rise of 0.32 °F (0.18 °C) per decade (Trenberth *et al.* 2007, pp. 235–336). However, at high elevations, the rate of increase (0.48 °F (0.27 °C) per decade) greatly exceeds the global rate (Trenberth *et al.* 2007, pp. 235–336).

Overall, the daily temperature range in Hawaii is decreasing, resulting in a warmer environment, especially at higher elevations and at night. In the main Hawaiian Islands, predicted changes associated with increases in temperature include a shift in vegetation zones upslope, shift in animal species' ranges, changes in mean precipitation with unpredictable effects on local environments, increased occurrence of drought cycles, and increases in the intensity and number of hurricanes (Loope and Giambelluca 1998, pp. 514–515; U.S. Global Change Research Program (US–GCRP) 2009, pp. 1–188). In addition, weather regime changes (*e.g.,* droughts, floods) will likely result from increased annual average temperatures related to more frequent El Niño episodes in Hawaii (Giambelluca *et al.* 1991, p. v). However, despite considerable progress made by expert scientists toward understanding the impacts of climate change on many of the processes that contribute to El Niño variability, it is not possible to say whether or not El Niño activity will be affected by climate change (Collins *et al.* 2010, p. 391).

Globally, the warming atmosphere is creating a plethora of anticipated and unanticipated environmental changes such as melting ice caps, decline in annual snow mass, sea-level rise, ocean acidification, increase in storm frequency and intensity (*e.g.,* hurricanes, cyclones, and tornadoes), and altered precipitation patterns that contribute to regional increases in floods, heat waves, drought, and wildfires that also displace species and alter or destroy natural ecosystems (Pounds *et al.* 1999, pp. 611–612; IPCC AR4 2007, pp. 26–73; Marshall *et al.* 2008, p. 273; U.S. Climate Change Science Program 2008, pp. 1–164; Flannigan *et al.* 2009, p. 483; US–GCRP 2009, pp. 1–188; Allen *et al.* 2010, pp. 660–662; Warren 2011, pp. 221–226). These environmental changes are predicted to alter species migration patterns, lifecycles, and ecosystem processes such as nutrient cycles, water availability, and decomposition (IPCC AR4 2007, pp. 26–73; Pounds *et al.* 1999, pp. 611–612; Sturrock *et al.* 2011, p. 144; Townsend *et al.* 2011, p. 15; Warren 2011, pp. 221–226). The species extinction rate is predicted to increase congruent with ambient temperature increase (US–GCRP 2009, pp. 1–188). In Hawaii, these environmental changes associated with a rise in ambient temperature can directly and indirectly impact the survival of native plants and animals, including the 15 species proposed for listing in this rule, and the ecosystems that support them.

Climate Change and Precipitation

As global surface temperature rises, the evaporation of water vapor increases, resulting in higher concentrations of water vapor in the atmosphere, further resulting in altered global precipitation patterns (U.S. National Science and Technology Council (US–NSTC) 2008, pp. 69–94; US–GCRP 2009, pp. 1–188). While annual global precipitation has increased over the last 100 years, the combined effect of increases in evaporation and evapotranspiration is causing land surface drying in some regions leading to a greater incidence and severity of drought (US–NSTC 2008, pp. 69–94; US–GCRP 2009, pp. 1–188). Over the past 100 years, the Hawaiian Islands have experienced an annual decline in precipitation of just over 9 percent (US–NSTC 2008, p. 70). Other data on precipitation in Hawaii, which include sea-level precipitation and the added orographic effects, show a steady and significant decline of about 15 percent over the last 15 to 20 years (Chu and Chen 2005, p. 4,881–4,900; Diaz *et al.* 2005, pp. 1–3). Exact future changes in precipitation in Hawaii and the forecast of those changes are uncertain because they depend, in part, on how the El Niño-La Niña weather cycle might change (State of Hawaii 1998, pp. 2–10).

In the oceans around Hawaii, the average annual rainfall at sea level is about 25 in (63.5 cm). The orographic features of the islands increase this annual average to about 70 in (177.8 cm) but can exceed 240 in (609.6 cm) in the wettest mountain areas. Rainfall is distributed unevenly across each high island, and rainfall gradients are extreme (approximately 25 in (63.5 cm) per mile), creating both very dry and very wet areas. Global climate modeling predicts that, by 2100, net precipitation at sea level near the Hawaiian Islands will decrease in winter by about 4 to 6 percent, with no significant change during summer (IPCC AR4 2007, pp. 1–73). Downscaling of global climate models indicates that wet-season (winter) precipitation will decrease by 5 percent to 10 percent, while dry-season (summer) precipitation will increase by about 5 percent (Timm and Diaz 2009, pp. 4,261–4,280). These data are also supported by a steady decline in stream flow beginning in the early 1940s (Oki 2004, p. 1). Altered seasonal moisture regimes can have negative impacts on plant growth cycles and overall negative impacts on natural ecosystems (US–GCRP 2009, pp. 1–188). Long periods of decline in annual precipitation result in a reduction in moisture availability; an increase in drought frequency and intensity; and a self-perpetuating cycle of nonnative plants, fire, and erosion (US–GCRP 2009, pp. 1–188; Warren 2011, pp. 221–226) (see ''Habitat Destruction and Modification by Fire,'' above). These impacts may negatively affect the 15 species proposed for listing in this rule and the 10 ecosystems that support them.

Climate Change, and Tropical Cyclone Frequency and Intensity

A tropical cyclone is the generic term for a medium- to large-scale, low-pressure storm system over tropical or subtropical waters with organized convection (*i.e.*, thunderstorm activity) and definite cyclonic surface wind circulation (counterclockwise direction in the Northern Hemisphere) (Holland 1993, pp. 1–8). In the Northeast Pacific Ocean, east of the International Date Line, once a tropical cyclone reaches an intensity of winds of at least 74 mi per hour (33 m per second), it is considered a hurricane (Neumann 1993, pp. 1–2). Climate modeling has projected changes in tropical cyclone frequency and intensity due to global warming over the next 100 to 200 years (Vecchi and Soden 2007, pp. 1,068–1,069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1,371, Figure 14). The frequency of hurricanes generated by tropical cyclones is projected to decrease in the central Pacific (*e.g.*, the main and Northwestern Hawaiian Islands) while storm intensity (strength) is projected to increase by a few percent over this period (Vecchi and Soden

2007, pp. 1,068–1,069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1,371, Figure 14). There are no climate model predictions for a change in the duration of Pacific tropical cyclone storm season (which generally runs from May through November).

In general, tropical cyclones with the intensities of hurricanes have been a rare occurrence in the Hawaiian Islands. From the 1800s until 1949, hurricanes were only rarely reported from ships in the area. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands, 5 of which caused serious damage (Businger 1998, pp. 1–2). Hurricanes may cause destruction of native vegetation and open the native canopy, allowing for invasion by nonnative plant species that compete for space, water, and nutrients, and alter basic water and nutrient cycling processes leading to decreased growth and reproduction for all 13 plant species in this proposed rule (see Table 3, above) (Perlman 1992, pp. 1–9; Kitayama and Mueller-Dombois 1995, p. 671). Hurricanes also constitute a threat to the picture-wing fly proposed for listing as a result of their high winds that may dislodge larvae from their host plants, thereby increasing the likelihood of mortality caused by lack of essential nutrients for proper development or increased exposure to predators, such as nonnative yellowjacket wasps and ants, and destruction of host plants (see ''*Factor C. Disease or Predation,*'' below). Although there is historical evidence of only one hurricane that approached from the east and impacted the islands of Maui and Hawaii (Businger 1998, p.3), damage by future hurricanes could further decrease the remaining native plant-dominated habitat areas that support the 13 plant species and the picture-wing fly (*Drosophila digressa*) proposed for listing in this rule, in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff and wet cliff).

Climate Change, and Sea-Level Rise and Coastal Inundation

On a global scale, sea level is rising as a result of thermal expansion of warming ocean water; the melting of ice sheets, glaciers, and ice caps; and the addition of water from terrestrial systems (Climate Institute 2011, in litt.). Sea level rose at an average rate of 0.1 in (1.8 mm) per year between 1961 and 2003 (IPCC 2007, pp. 30–73), and the predicted increase by the end of this century, without accounting for ice sheet flow, ranges from 0.6 ft to 2.0 ft (0.18 m to 0.6 m) (IPCC AR4 2007, p. 30). When ice sheet and glacial melt are incorporated into models the average estimated increase in sea level by the year 2100 is approximately 3 to 4 ft (0.9 to 1.2 m), with some estimates as high as 6.6 ft (2.0 m) to 7.8 ft (2.4 m) (Rahmstorf 2007, pp. 368–370; Pfeffer *et al.* 2008, p. 1,340; Fletcher 2009, p. 7; US–GCRP 2009, p. 18). The species *Bidens hillebrandiana* ssp. *hillebrandiana* occurs within the coastal ecosystem. Although there is no specific data available on how sea-level rise and coastal inundation will impact this species, its occurrence in close proximity to the coastline places it at risk of the threat of sea level rise and coastal inundation due to climate change.

In summary, increased interannual variability of ambient temperature, precipitation, hurricanes, and sea-level rise and inundation would provide additional stresses on 9 of the 10 ecosystems (all except the anchialine pool ecosystem) and 14 of the 15 associated species (all except the anchialine pool shrimp) proposed for listing in this rule because they are highly vulnerable to disturbance and related invasion of nonnative species. The probability of a species going extinct as a result of such factors increases when its range is restricted, habitat decreases, and population numbers decline (IPCC 2007, pp. 8–11). In addition, these 14 species may be at a greater risk of extinction due to the loss of redundancy and resiliency created by their limited ranges, restricted habitat requirements, small population sizes, or low numbers of individuals. Therefore, we would expect these 14 species to be particularly vulnerable to projected environmental impacts that may result from changes in climate and subsequent impacts to their habitats (*e.g.*, Loope and Giambelluca 1998, pp. 504–505; Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Giambelluca and Luke 2007, pp. 13–18). Based on the above information, we conclude that changes in environmental conditions that result from climate change are likely to negatively impact 14 of the 15 species (all except the anchialine pool shrimp) proposed for listing in this rule, and exacerbate other threats. This potential threat will increase in the near future.

Habitat Destruction and Modification by Sedimentation

Anchialine pool habitats can gradually disappear when organic and mineral deposits from aquatic production and wind-blown materials accumulate through a process known as senescence (Maciolek and Brock 1974, p. 3; Brock 2004, pp. 11, 35–36). Conditions promoting rapid senescence are known to include an increased amount of sediment deposition, good exposure to light, shallowness, and a weak connection with the water table, resulting in sediment and detritus accumulating within the pool instead of being flushed away with tidal exchanges and groundwater flow (Maciolek and Brock 1974, p. 3; Brock 2004, pp. 11, 35–36).

Based upon what we know about healthy anchialine pool systems (Brock 2004, pp. 11, 35–36), it is our understanding that one or more factors including increased sedimentation, may be synergistically degrading the health of the Lua O Palahemo pool system. Sedimentation is likely reducing the capacity of the pool to produce adequate cyanobacteria and algae to support some of the pool's 'herbivorous' hypogeal shrimp species. A decreased food supply (*i.e.*, a reduction in cyanobacteria and algae) would likely lead to a lower abundance of herbivorous hypogeal shrimp species as well as a lower abundance of the known carnivorous species, *Metabetaeus lohena,* and possibly *Vetericaris chaceorum,* whose gut contents contained fragments of other crustaceans (including *Procaris hawaiiana,* a co-occurring anchialine pool shrimp), indicating that the species may be carnivorous upon its associated anchialine pool shrimp species (see above, Description of the 15 Species Proposed for Listing).

A second factor is that increased sedimentation in Lua O Palahemo may be overloading the capacity of the pool and lava tube below to adequately flush water to maintain the water quality needed to support the micro-organisms that are fed upon by several of the pool's shrimp species (*e.g., Calliasmata pholidota, Halocaridina palahemo, Halocaridina rubra,* and *Procaris hawaiiana*) and their associated shrimp predators, *Antecaridina lauensis* and *Vetericaris chaceorum* (Brock 2004, pp. 10–11, 16).

A third factor that may be contributing to the degradation of the health of the Lua O Palahemo pool system is that increased sedimentation and an inability of the pool system to adequately flush its waters, are either diminishing or preventing migration and recolonization of the pool by the hypogeal shrimp species from the surrounding porous watertable bedrock. In other words, this lack of porosity may be affecting the movement of shrimp to and from food resources, and the

accumulating sedimentation and detritus reduce productivity within the pool. This reduction in productivity reduces the carrying capacity of the habitat to support hypogeal shrimp like *Vetericaris chaceorum* (Brock 2004, p. 10). Indeed, Brock (2004, p. 16) has established that pool productivity and shrimp presence are interdependent. In some cases, a pool that loses its shrimp populations due, for example, to the introduction of nonnative fish, more quickly loses its capacity to support shrimp in the future as a result of excessive buildup of algae and cyanobacterial mats that block and impede the pool's ability to flush and maintain necessary water quality (Brock 2004, p. 16).

As described above, in 1985, visibility within the lava tube portion of Lua O Palahemo was as great as 20 m (66 ft). During this dive survey, Kensley and Williams (1986, p. 418) estimated that other species of hypogeal shrimp co-occurring with *Vetericaris chaceorum* numbered in the tens of thousands for *Halocaridina* sp., in the thousands for *Procaris hawaiana,* and less than 100 for *Calliasmata* sp. By 2010, visibility had been reduced to 8 cm (3 in) within the pool itself, and underwater video taken during the survey shows continuous clouds of thick sediment and detritus within the water column below the pool. During this survey, only one *P. hawaiiana* individual was trapped, and seven others were observed in the video footage. No other species of shrimp, including *V. chaceorum,* were observed during the 2010 survey (Wada 2010, in litt.). Kensley and Williams (1986, p. 426) reported fragments of crustaceans, including *P. hawaiiana,* in gut contents of *V. chaceorum.* While *P. hawaiiana* occurs in other anchialine pool habitats on Hawaii Island and Maui, *V. chaceorum* is currently only known from Lua O Palahemo. A reduction in the abundance of *P. hawaiiana* may indicate a loss of food resources for *V. chaceorum,* although further research is needed to confirm this.

During the 2010 survey, it was discovered that a possible partial collapse of the interior rock walls of Lua O Palahemo pool may have occurred and caused the difficulty experienced by the survey team to bodily survey to any depth below the pool's surface (Wada 2010, in litt.). This collapse may also be contributing to reduced flushing in the pool portion of Lua O Palahemo, leading to an accumulation of sediment and detritus in the pool. This accumulation of sediment could certainly reduce both food productivity (*i.e.*, reduce the abundance and availability of other species of hypogeal shrimp co-occurring with *Vetericaris chaceorum*) and the ability of *V. chaceorum* and other species of hypogeal shrimp co-occurring with *V. chaceorum* to move between the pool and the water table, thus leading to a reduction of their numbers within the pool. The degradation of Lua O Palahemo by senescence from sedimentation is a threat to the continued existence of *V. chaceorum* by degrading the conditions of the only known anchialine pool that supports this species and by reducing available food resources (Brock 2004, pp. 10–11, 16).

Summary of Factor A

The threats to the habitats of the 15 species proposed for listing in this rule occur throughout the entire range of each of the species. These threats include land conversion by agriculture and urbanization, nonnative ungulates and plants, fire, natural disasters, environmental changes resulting from climate change, sedimentation, and the interaction of these threats.

Development and urbanization of lowland dry habitat on Hawaii Island represents a serious and ongoing threat to *Bidens micrantha* ssp. *ctenophylla* because of loss and degradation of habitat.

The effects from ungulates are serious and ongoing because ungulates currently occur in all of the 10 ecosystems that support the 15 species proposed for listing in this rule. Ungulates are a direct threat to the 13 plant species, the anchialine pool shrimp (*Vetericaris chaceorum*), and the picture-wing fly (*Drosophila digressa*) proposed for listing in this rule (see Table 3), because they cause: (1) Trampling and grazing that directly impact the plant communities, including the plant species proposed for listing, and impact the host plants used by the picture-wing fly for shelter, foraging, and reproduction; (2) increased soil disturbance, leading to mechanical damage to individuals of the plant species proposed for listing, and also plants used by the picture-wing fly for shelter, foraging, and reproduction; (3) creation of open, disturbed areas conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds, which results over time in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation (leading to all of the negative impacts associated with nonnative plants, listed below); and (4) increased erosion, followed by sedimentation affecting the anchialine pool habitat of *V. chaceorum.* These threats are expected to continue or increase without ungulate control or eradication.

Nonnative plants represent a serious and ongoing threat to 14 of the 15 species proposed for listing (all 13 plant species and the picture-wing fly (see Table 3)) through habitat destruction and modification, because they: (1) Adversely impact microhabitat by modifying the availability of light; (2) alter soil-water regimes; (3) modify nutrient cycling processes; (4) alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat; (5) outcompete, and possibly directly inhibit the growth of, native plant species; and (6) create opportunities for subsequential establishment of nonnative vertebrates and invertebrates. Each of these threats can convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35). This conversion has negative impacts on all 13 plant species addressed here, as well as the native plant species upon which the picture-wing fly depends for essential life-history needs.

The threat from fire to 4 of the 15 species in this proposed rule that depend on lowland dry, lowland mesic, lowland wet, montane dry, and montane mesic ecosystems (the plants *Bidens micrantha* ssp. *ctenophylla, Phyllostegia floribunda,* and *Schiedea hawaiiensis,* and the picture-wing fly; see Table 3) is serious and ongoing because fire damages and destroys native vegetation, including dormant seeds, seedlings, and juvenile and adult plants. Many nonnative, invasive plants, particularly fire-tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122). Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimatic conditions and creating conditions favorable to alien plants. The threat from fire is unpredictable but increasing in frequency in ecosystems that have been invaded by nonnative fire-prone grasses, and that are experiencing abnormally dry to severe drought conditions.

Natural disasters such as hurricanes are a threat to native Hawaiian terrestrial habitat including 9 of the 10 ecosystems (all except the anchialine pool ecosystem) addressed here, and the 13 plant species identified in this rule, because they result in direct impacts to ecosystems and individual plants by opening the forest canopy, modifying

available light, and creating disturbed areas that are conducive to invasion by nonnative pest plants (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 346–347). In addition, hurricanes threaten the picture-wing fly species proposed for listing in this rule because strong winds and intense rainfall can kill individual host plants, and can dislodge individual flies and their larvae from their host plants and deposit them on the ground where they may be crushed by falling debris or eaten by nonnative wasps and ants. The impacts of hurricanes and other stochastic natural events can be particularly devastating to 14 of the species (all except the anchialine pool shrimp) proposed for listing because, as a result of other threats, they now persist in low numbers or occur in restricted ranges and are therefore less resilient to such disturbances, rendering them highly vulnerable to extirpation. Furthermore, a particularly destructive hurricane holds the potential of driving a localized endemic species to extinction in a single event. Hurricanes pose an ongoing and ever-present threat because they are unpredictable and can happen at any time.

Rockfalls, treefalls, landsides, heavy rain, and erosion are a threat to four of the species proposed for listing (the plants *Bidens hillebrandiana* ssp. *hillebrandiana, Cyanea marksii, Cyanea tritomantha,* and *Cyrtandra wagneri;* see Table 3) by destabilizing substrates, damaging and destroying individual plants, and altering hydrological patterns, which result in habitat destruction or modification and changes to native plant and animal communities. Drought threatens two plant species (*Bidens micrantha* ssp. *ctenophylla* and *Schiedea hawaiiensis*) and the picture-wing fly (*Drosophila digressa*) by the loss or degradation of habitat due to death of individual native plants and host tree species, as well as an increase in forest and brush fires. These threats are serious and unpredictable, and have the potential to occur at any time.

Changes in environmental conditions that may result from global climate change include increasing temperatures, decreasing precipitation, increasing storm intensities, and sea-level rise and coastal inundation. The consequent impacts on the 15 species proposed for listing here are related to changes in microclimatic conditions in their habitats. These changes may lead to the loss of native species due to direct physiological stress, the loss or alteration of habitat, or changes in disturbance regimes (*e.g.,* droughts, fire, storms, and hurricanes). However, the specific and cumulative effects of climate change on the 15 species are presently unknown, and we are not able to determine the extent of this possible threat with confidence.

Erosion and resulting sedimentation of the Lua O Palahemo pool system is a threat to the anchialine pool shrimp (*Vetericaris chaceorum*). The sedimentation of the pool may also change the water chemistry (*i.e.*, salinity and dissolved oxygen) of the pool and the ability of the pool to support hypogeal anchialine pool shrimp such as *V. chaceorum,* although further research is needed. Accumulation of sediment and detritus reduces the abundance of food resources, such as *P. hawaiana* and other co-occurring hypogeal shrimp, for *V. chaceorum,* although further research is needed to confirm this. In addition, sedimentation degrades the conditions of the only anchialine pool known to support *V. chaceorum.*

Factor B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The plant species *Pritchardia lanigera* is threatened by overcollection for commercial and recreational purposes (Hillebrand 1888, pp. 21–27; Chapin *et al.* 2004, pp. 273, 278). We are aware that some species of Hawaiian anchialine pool shrimp are sold and purchased on the Internet; however we do not believe that the proposed anchialine pool shrimp is threatened by overcollection for commercial or recreational purposes due to the remoteness of its currently known location and difficulty of accessing this species within the deeper lava tube portions of the Lua O Palahemo anchialine pool. We are not aware of any threats to the remaining 12 plant species or the picture-wing fly addressed in this proposed rule that would be attributed to overutilization for commercial, recreational, scientific or educational purposes.

Pritchardia lanigera

The genus *Pritchardia* has 28 known species, 14 of which are endemic to the Hawaiian Islands, and its range is restricted to the Pacific archipelagos of Hawaii, Fiji, the Cook Islands, Tonga, and Tuamotus (Chapin *et al.* 2004, p. 273). *Pritchardia* palms have been valued as collectibles for centuries (Hillebrand 1888, pp. 21–27; Chapin *et al.* 2004, pp. 273, 278). In 1888, botanist Wilhelm Hillebrand noted that, ''* * * one species of *Pritchardia* in Nuuanu, * * * was completely exterminated when natives found that the trees were saleable to amateurs of gardening in Honolulu.'' *Pritchardia* has become one of the most widely cultivated ornamental palm genera in the world (Maunder *et al.* 2001 in Chapin *et al.* 2004, p. 278). There is an international trade in *Pritchardia* seeds and seedlings that has created a market in which individual *Pritchardia* seeds sell for 5 to 35 dollars each (Chapin *et al.* 2004, p. 278; Clark 2010, in litt.; rarepalmseeds.com). Most seeds sold are cultivated; however, wild collection of some ''highly-threatened'' species does occur (Chapin *et al.* 2004, p. 278). There are over a dozen internet Web sites that offer Hawaiian *Pritchardi*a plants and seeds for sale, including *Pritchardia lanigera* (*e.g.*, eBay.com; google.com). Based on the history of collection of endemic Hawaiian *Pritchardia* plants and seeds, the market for Hawaiian *Pritchardia* plants and seeds, and the vulnerability of the small populations of *Pritchardia lanigera* to the negative impacts of any collection, we consider overcollection of *Pritchardia lanigera* to pose a serious and ongoing threat, because it can occur at any time, although its occurrence is not predictable.

Anchialine Pool Shrimp

While we are aware of only one collection of the anchialine pool shrimp *Vetericaris chaceorum* for scientific and educational purposes (Kensley and Williams, 1986, pp. 419–429), there is no information available that indicates this species has ever been collected for commercial or recreational purposes. Other Hawaiian anchialine pool shrimp (*e.g.,* opaeula (*Halocaridina rubra*)) and the candidate species *Metabetaeus lohena* (NCN) are collected for the aquarium market (*e.g.,* Fuku-Bonsai.com; ecosaqua.com; eBay.com; and, seahorse.com), including self-contained aquariums similar to those marketed by Ecosphere Associates, Inc. (Ecosphere Associates 2011, p. 1). Two of these companies are located in Hawaii (FukuBonsai and Stockly's Aquariums of Hawaii). However, we believe the anchialine pool shrimp proposed for listing in this rule is not likely to be among those species collected for commercial or recreational purposes given the species' limited distribution and generally inaccessible habitat. Therefore, we do not consider overcollection to pose a threat to *Vetericaris chaceorum.*

Summary of Overcollection for Commercial, Recreational, Scientific, or Educational Purposes

We have no evidence to suggest that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to 12 of the 13

plant species, the picture-wing fly, or the anchialine pool shrimp proposed for listing in this rule. The plant species *Pritchardia lanigera* is vulnerable to the impacts of overutilization due to collection for trade or market. Based on the history of collection of endemic Hawaiian *Pritchardia* spp., the market for Hawaiian *Pritchardia* trees and seeds, and the inherent vulnerability of the small populations of *Pritcharidia lanigera* to the removal of individuals (seeds), we consider collection to pose a serious and ongoing threat to this species.

Factor C. Disease or Predation

Disease

We are not aware of any threats to the 13 plant species, anchialine pool shrimp, or picture-wing fly, proposed for listing in this rule that would be attributable to disease.

Predation and Herbivory

Hawaii's plants and animals evolved in nearly complete isolation from continental influences. Successful colonization of these remote volcanic islands was infrequent, and many organisms never succeeded in establishing populations. As an example, Hawaii lacks any native ants or conifers, has very few families of birds, and has only a single native land mammal—a bat (Loope 1998, p. 748). In the absence of any grazing or browsing mammals, plants that became established did not need mechanical or chemical defenses against mammalian herbivory such as thorns, prickles, and production of toxins. As the evolutionary pressure to either produce or maintain such defenses was lacking, Hawaiian plants either lost or never developed these adaptations (Carlquist 1980, p. 173). Likewise, native Hawaiian birds and insects experienced no evolutionary pressure to develop anti-predator mechanisms against mammals or invertebrates that were not historically present on the island. The native flora and fauna of the islands are thus particularly vulnerable to the impacts of introduced nonnative species, as discussed below.

Introduced Ungulates

In addition to the habitat impacts discussed above (see ''*Habitat Destruction and Modification by Introduced Ungulates*'' under Factor A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*), introduced ungulates and their resulting impacts are a threat to the 13 plant species in this proposal by grazing and browsing individual plants (this information is also presented in Table 3): *Bidens hillebrandiana* ssp. *hillebrandiana* (pigs and goats), *B. micrantha* ssp. *ctenophylla* (pigs and goats), *Cyanea marksii* (pigs, cattle, and mouflon), *Cyanea tritomantha* (pigs and cattle), *Cyrtandra nanawaleensis* (pigs), *Cyrtandra wagneri* (pigs), *Phyllostegia floribunda* (pigs), *Pittosporum hawaiiense* (pigs, cattle, and mouflon), *Platydesma remyi* (pigs), *Pritchardia lanigera* (pigs, goats, and mouflon), *Schiedea diffusa* ssp. *macraei* (pigs and cattle), *Schiedea hawaiiensis* (pigs, goats, sheep, and mouflon), and *Stenogyne cranwelliae* (pigs). In addition, introduced ungulates are a threat to the picture-wing fly proposed for listing by grazing and browsing individuals of its host plant, *Charpentiera* spp. (pigs, goats, cattle, and mouflon).

We have direct evidence of ungulate damage to some of these species, but for many, due to their remote locations or lack of study, ungulate damage is presumed based on the known presence of these introduced ungulates in the areas where these species occur and the results of studies conducted in Hawaii and elsewhere (Diong 1982, p. 160). Magnacca *et al.* (2008, p. 32) and others (Maui Forest Bird Recovery Project 2011, in litt.) found that native plant species such as the Hawaiian lobelioids (*e.g., Cyanea* spp.) and plants in the African violet family (*e.g., Cyrtandra* spp.) are particularly vulnerable to pig disturbance. In a study conducted by Diong (1982, p. 160) on Maui, feral pigs were observed browsing on young shoots, leaves, and fronds of a wide variety of plants, of which over 75 percent were endemic species. A stomach content analysis in this study showed that 60 percent of the pigs' food source consisted of the endemic *Cibotium* (hapuu, tree fern). Pigs were observed to fell plants and remove the bark from native plant species within the genera *Cibotium, Clermontia, Coprosma, Hedyotis, Psychotria,* and *Scaevola,* resulting in larger trees being killed over a few months of repeated feeding (Diong 1982, p. 144). Beach (1997, pp. 3–4) found that feral pigs in Texas spread disease and parasites, and their rooting and wallowing behavior led to spoilage of watering holes and loss of soil through leaching and erosion. Rooting activities also decreased the survivability of some plant species through disruption at root level of mature plants and seedlings (Beach 1997, pp. 3–4; Anderson *et al.* 2007, pp. 2–3). In Hawaii, pigs dig up forest ground cover consisting of delicate and rare species of orchids, ferns, mints, lobeliads, and other taxa, including roots, tubers and rhizomes (Stone and Anderson 1988, p. 137).

In addition, there are direct observations of pig herbivory, on either the fresh seedlings, fruits, seeds, or leaves, on each of the 13 plant species proposed for listing in this rule, including *Bidens hillebrandiana* ssp. *hillebrandiana* (Bio 2011, pers. comm.), *B. micrantha* ssp. *ctenophylla* (Bio 2011, pers. comm.), *Cyanea marksii* (PEPP 2010, p. 52; Bio 2011, pers. comm.), *Cyanea tritomantha* (HBMP 2010f; PEPP 2010, p. 60), *Cyrtandra nanawaleensis* (Bio 2011, pers. comm.), *Cyrtandra wagneri* (Lorence and Perlman 2007, p. 359; PEPP 2010, p. 63), *Phyllostegia floribunda* (Perlman and Wood 1993—*Hawaii Plant Conservation Maps database;* Perry 2006, in litt.; Pratt 2007b, in litt.; USFWS 2010, p. 4–66), *Pittosporum hawaiiense* (Bio 2011, pers. comm.), *Platydesma remyi* (PEPP 2008, p. 107), *Pritchardia lanigera* (Wood 1995, in litt.; HBMP 2010c), *Schiedea diffusa* ssp. *macraei* (Wagner *et al.* 2005d, p. 32), *Schiedea hawaiiensis* (Mitchell *et al.* 2005a; Wagner *et al.* 2005d, p. 32; Bio 2011, pers. comm.), and *Stenogyne cranwelliae* (HBMP 2010k). According to Magnacca *et al.* (2008, p. 32) several of the host plants of Hawaiian picture-wing flies, including the host plant of the picture-wing fly (*i.e., Charpentiera* sp.) proposed in this rule, are susceptible to damage from feral ungulates such as pigs. As pigs occur in 9 of the 10 ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Hawaii Island, the results of the studies described above suggest that pigs can also alter these ecosystems and directly damage or destroy native plants.

Feral goats thrive on a variety of food plants, and are instrumental in the decline of native vegetation in many areas (Cuddihy and Stone 1990, p. 64). Feral goats trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Clarke and Cuddihy 1980, p. C–20; van Riper and van Riper 1982, pp. 34–35; Tomich 1986, pp. 153–156; Cuddihy and Stone 1990, p. 64). Goats were observed to browse on native plant species in the following genera: *Argyroxiphium, Canavalia, Plantago, Schiedea,* and *Stenogyne* (Cuddihy and Stone 1990, p. 64). A study on the island of Hawaii demonstrated that *Acacia koa* seedlings are unable to survive due to browsing and grazing by goats (Spatz and

Mueller-Dombois 1973, p. 874). If goats are maintained at constantly high numbers, mature *A. koa* trees will eventually die, and with them the root systems that support suckers and vegetative reproduction. One study demonstrated a positive height-growth response of *A. koa* suckers to the 3-year exclusion of goats (1968–1971) inside a fenced area, whereas suckers were similarly abundant but very small outside of the fenced area (Spatz and Mueller-Dombois 1973, p. 873). Another study at Puuwaawaa demonstrated that prior to management actions in 1985, regeneration of endemic shrubs and trees in the goat-grazed area was almost totally lacking, contributing to the invasion of the forest understory by exotic grasses and weeds. After the removal of grazing animals in 1985, *A. koa* and *Metrosideros* spp. seedlings were observed germinating by the thousands (HDOFAW 2002, p. 52). Based on a comparison of fenced and unfenced areas, it is clear that goats can devastate native ecosystems (Loope *et al.* 1988, p. 277).

Goats seek out seedlings and juveniles of *Bidens* spp. (Bio 2011, pers. comm.), and are known to indiscriminately graze on and eat the seeds of native Hawaiian *Pritchardia* species (Chapin *et al.* 2004, p. 274; Chapin *et al.* 2007, p. 20). The two known occurrences of the plant *Pritchardia lanigera* are found in an unfenced area of the Kohala Mountains, where they are impacted by browsing and grazing by goats and other ungulates (Warshauer *et al.* 2009, pp. 10, 24; Laws *et al.* 2010, in litt.). *Schiedea* spp. are favored by grazing goats, and goat browsing threatens the only known population of the plant species *Schiedea hawaiiensis* (Wagner *et al.* 2005d, p. 32; Chynoweth *et al.* 2011, in litt.). In addition, there are direct observations of goat herbivory, on either the fresh seedlings, fruit, seeds, or leaves, of four of the plant species proposed for listing in this rule, including *Bidens hillebrandiana* ssp. *hillebrandiana* (Bio 2011, pers. comm.), *B. micrantha* ssp. *ctenophylla* (Bio 2011, pers. comm.; Knoche 2011, in litt.), *Pritchardia lanigera* (Wood 1995, in litt.; Chapin *et al.* 2004, p. 274), and *Schiedea hawaiiensis* (Mitchell *et al.* 2005a). According to Magnacca *et al.* (2008, p. 32) several of the host plants of Hawaiian picture-wing flies, including the host plant of the picture-wing fly (*i.e., Charpentiera* sp.) proposed in this rule, are susceptible to damage from feral ungulates such as goats. As goats occur in nine of the ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Hawaii Island, the results of the studies described above suggest that goats can also alter these ecosystems and directly damage or destroy native plants.

Four of the plant species proposed for listing in this rule (*Cyanea marksii, C. tritomantha, Pittosporum hawaiiense,* and *Schiedea diffusa* ssp. *macraei*), and the host plant of the picture-wing fly (*Charpentiera sp.*), are impacted by browsing and grazing by feral cattle. Cattle, either feral or domestic, are considered one of the most significant factors in the destruction of Hawaiian forests (Baldwin and Fagerlund 1943, pp. 118–122). Captain George Vancouver of the British Royal Navy is attributed with introducing cattle to the Hawaiian Islands in 1793 (Fischer 2007, p. 350), by way of a gift to King Kamehameha I on the island of Hawaii. Over time, cattle became established on all of the main Hawaiian Islands, and historically feral cattle were found on the islands of Kauai, Oahu, Molokai, Maui, Kahoolawe, and Hawaii. Currently, feral cattle are found only on Maui and Hawaii, typically in accessible forests and certain coastal and lowland leeward habitats (Tomich 1986, pp. 140–144).

In HVNP, Cuddihy reported that there were twice as many native plant species as nonnatives found in areas that had been fenced to exclude feral cattle, whereas on the adjacent, nonfenced cattle ranch, there were twice as many nonnative plant species as natives (Cuddihy 1984, pp. 16, 34). Skolmen and Fujii (1980, pp. 301–310) found that *Acacia koa* seedlings were able to reestablish in a moist *A. koa–Metrosideros polymorpha* forest on Hawaii Island after the area was fenced to exclude feral cattle (Skolmen and Fujii 1980, pp. 301–310). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas conducive to invasion by nonnative plants, and spread seeds of nonnative plants in their feces and on their bodies. Cattle have been observed accessing native plants in Hakalau NWR by breaking down ungulate exclosure fences (Tummons 2011, p. 4). In addition, there are direct observations of cattle herbivory on three of the plant species proposed in this rule, including *Cyanea marksii* (PEPP 2010, p. 52), *C. tritomantha* (PEPP 2010, p. 60), and *Pittosporum hawaiiense* (Bio 2011, pers. comm.). In addition, although we have no direct observations, we also consider the plant *Schiedea diffusa* ssp. *macraei* to be susceptible to herbivory by cattle because cattle are reported to favor plants in the genus *Schiedea* (Wagner *et al.* 2005d, pp. 31–32) and feral cattle still occur in the Kohala Mountains, the location of the only known individual of this species. Between 1987 and 1994, populations of *Schiedea salicaria* on West Maui were grazed so extensively by cattle, all of the individuals of this species in accessible areas disappeared by 1994 (Wagner *et al.* 2005d, p. 32). Cattle are also known to browse the host plant of the proposed picture-wing fly (*Charpentiera* spp.) (Magnacca *et al.* 2008, p. 32; Magnacca 2011b, pers. comm.). As feral cattle occur in five of the described ecosystems (anchialine pool, lowland mesic, lowland wet, montane mesic, and montane wet) on Hawaii Island, the results of the studies described above suggest that feral cattle can also alter these ecosystems and directly damage or destroy native plants.

Feral sheep browse and trample native vegetation and have decimated large areas of native forest and shrubland (Tomich 1986, pp. 156–163; Cuddihy and Stone 1990, p. 65–66). Large areas of Hawaii Island have been devastated by sheep. For example, sheep browsing reduced seedling establishment of *Sophora chrysophylla* (mamane) so severely that it resulted in a reduction of the tree line elevation on Mauna Kea (Warner 1960 in Juvik and Juvik 1984, pp. 191–202). Currently there is a large sheep-mouflon sheep hybrid population (see ''Habitat Destruction and Modification by Introduced Ungulates'' above) on Mauna Kea that extends into the saddle and northern part of Mauna Loa, and there are reports that these animals are destroying endangered plants (Hess 2008, p. 1). There are direct observations of feral sheep herbivory on individuals of the only known occurrence of the plant species *Schiedea hawaiiensis* at PTA (Mitchell *et al.* 2005a; U.S. Army Garrison 2006, p. 34). As feral sheep occur in one of the described ecosystems (montane dry) on Hawaii Island, the results of the studies described above suggest that sheep can also alter this ecosystem and directly damage or destroy native plants.

Mouflon sheep graze native vegetation, trample undergrowth, spread weeds, and cause erosion. On the island of Hawaii, mouflon sheep browsing led to the decline in the largest population of the endangered *Argyroxiphium kauense* (kau silversword, Mauna Loa silversword or ahinahina) located on the former Kahuku Ranch, reducing it from a ''magnificent population of several thousand'' (Degener *et al.* 1976, pp. 173–174) to fewer than 2,000 individuals (unpublished data in Powell 1992, in litt., p. 312) over a period of 10

years (1974–1984). The native tree *Sophora chrysophylla* is also a preferred browse species for mouflon. According to Scowcroft and Sakai (1983, p. 495), mouflon eat the shoots, leaves, flowers and bark of this species. Bark stripping on the thin bark of a young tree is potentially lethal. Mouflon are also reported to strip bark from *Acacia koa* trees (Hess 2008, p. 3) and to seek out the threatened plant *Silene hawaiiensis* (Benitez *et al.* 2008, p. 57). In the Kahuku section of HVNP, mouflon jumped the park boundary fence and reduced one population of *S. hawaiiensis* to half its original size over a 3-year period (Belfield and Pratt 2002, p. 8). Other native species browsed by mouflon include *Geranium cuneatum* ssp. *cuneatum* (hinahina, silver geranium), *G. cuneatum* ssp. *hypoleucum* (hinahina, silver geranium), and *Sanicula sandwicensis* (NCN) (Benitez *et al.* 2008, pp. 59, 61). On Lanai, mouflon were once cited as one of the greatest threats to the endangered *Gardenia brighamii* (Mehrhoff 1993, p. 11), although fencing has now proven to be an effective mechanism against mouflon herbivory on this plant (Mehrhoff 1993, pp. 22–23). Due to their high agility and reproductive rates, mouflon sheep have the potential to occupy most ecosystems found on Hawaii Island, from sea-level to very high elevations (Hess 2010, pers. comm.; Ikagawa 2011, in litt.). Further, *Ovis* spp. are known throughout the world for chewing vegetation right down to the dirt (Ikagawa 2011, in litt.).

Recent research by Ikagawa (2011, in litt.) suggests that the plant species *Pritchardia lanigera* occurs within the observed range of mouflon, and is potentially impacted by mouflon browsing. In addition, there are direct observations or reports that mouflon sheep browsing and grazing significantly impact the plant species *Cyanea marksii, Pittosporum hawaiiense,* and *Schiedea hawaiiensis* (Bio 2011, pers. comm.; Pratt 2011e, in litt.), which are proposed for listing. The host plant (*Charpentiera* spp.) for the picture-wing fly species appears to be decreasing throughout its range due to impacts from mouflon browsing (Science Panel 2005, pp. 1–23; Magnacca 2011b, pers. comm.). As mouflon occur in five of the described ecosystems (lowland wet, lowland mesic, montane dry, montane mesic, and montane wet) on Hawaii Island, the results of the studies described above suggest that mouflon sheep can also alter these ecosystems and directly damage or destroy native plants.

Axis deer were introduced as a game animal to Molokai in 1868, Oahu by 1898, Lanai in 1920, and Maui in 1959, and between 2010 and 2011, unauthorized releases occurred on Hawaii Island (Hess 2008, p. 2; Kessler 2011, in litt.; Aila 2012a, in litt.). This new introduction to Hawaii Island raises a significant concern due to the reported damage axis deer cause on the island of Maui (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* above). Most of the available information on axis deer in the Hawaiian Islands concerns observations and reports from the island of Maui. On Maui, axis deer were introduced by the State as a game animal, but their numbers have steadily increased, especially in recent years on Haleakala (Luna 2003, p. 44). During the 4-year El Niño drought from 1998 through 2001, Maui experienced an 80 to 90 percent decline in shrub and vine species caused by deer browsing and girdling of young saplings. High mortality of rare and native plant species was observed (Medeiros 2010, pers. comm.). Axis deer consume progressively less palatable plants until no edible vegetation is left (Hess 2008, p. 3). Axis deer are highly adaptable to changing conditions, and are characterized as ''plastic'' (meaning flexible in their behavior) by Ables (1977, cited in Anderson 1999, p. 5). They exhibit a high degree of opportunism regarding their choice of forage (Dinerstein 1987, cited in Anderson 1999, p. 5) and can be found in all but the highest elevation ecosystems (subalpine and alpine) and montane bogs, according to Medeiros (2010, pers. comm.).

Axis deer on Maui follow a cycle of grazing and browsing in open lowland grasslands during the rainy season (November–March) and then migrate to the lava flows of montane mesic forests during the dry summer months to graze and browse native plants (Medeiros 2010, pers. comm.). Axis deer are known to favor the native plants *Abutilon menziesii* (an endangered species), *Erythrina sandwicensis* (wiliwili), and *Sida fallax* (ilima) (Medeiros 2010, pers. comm.). During the driest months of summer (July and August), axis deer can even be found along Maui's coastal roads as they search for food. Hunting pressure also appears to drive the deer into native forests, particularly the lower rainforests up to 4,000 to 5,000 ft (1,220 and 1,525 m) in elevation (Medeiros 2010, pers. comm.), and according to Kessler and Hess (2010, pers. comms.) axis deer can be found up to 9,000 ft (2,743 m) elevation. On Lanai, grazing by axis deer has been reported as a major threat to the endangered *Gardenia brighamii* (nau) (Mehrhoff 1993, p. 11). Swedberg and Walker (1978, cited in Anderson 2003, pp. 124–125) reported that in the upper forests of Lanai, the native plants *Osteomeles anthyllidifolia* (ulei) and *Leptecophylla tameiameiae* (pukiawe) comprised more than 30 percent of axis deer rumen volume. On Molokai browsing by axis deer has been reported on *Erythrina sandwicensis* and *Nototrichium sandwicense* (kului) (Medeiros *et al.* 1996, pp. 11, 19). Other native plant species consumed by axis deer include *Achyranthes splendens* (NCN), *Bidens campylotheca* ssp. *pentamera* (kookoolau) and *B. campylotheca* ssp. *waihoiensis* (kookoolau), *Chamaesyce celastroides* var. *lorifolia* (akoko), *Diospyros sandwicensis* (lama), *Geranium multiflorum* (nohoanu; an endangered species), *Lipochaeta rockii* var. *dissecta* (nehe), *Osmanthus sandwicensis* (ulupua), *Panicum torridum* (kakonakona), and *Santalum ellipticum* (laau ala) (Anderson 2002, poster; Perlman 2009, in litt., pp. 4–5). As demonstrated on the Islands of Lanai, Maui, and Molokai, axis deer will spread into nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Hawaii Island if not controlled. The newly established axis deer partnership (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,* above) is currently implementing an axis deer response and removal plan, and just recently reported their first confirmed removal on April 11, 2012 (Osher 2012, in litt.). In addition, there is a proposed revision to HRS 91 (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* and *Factor D. The Inadequacy of Existing Regulatory Mechanisms*) that would address the gap in the current emergency rules authority and expand the ability of State agencies to adopt emergency rules to include situations that impose imminent threats to natural resources (*i.e.,* axis deer on Hawaii Island). The results from the studies above, combined with direct observations from field biologists, suggest that grazing and browsing by axis deer can impose negative impacts to the nine ecosystems above and their associated native plants should this nonnative ungulate increase in numbers and range on Hawaii Island.

Other Introduced Vertebrates

Rats

There are three species of introduced rats in the Hawaiian Islands. Studies of Polynesian rat (*Rattus exulans*) DNA suggest they first appeared in the Hawaiian Islands along with emigrants from the Marquesas about 400 A.D., with a second interaction around 1100 A.D (Ziegler 2002, p. 315). The black rat (*R. rattus*) and the Norway rat (*R. norvegicus*) most likely arrived in the Hawaiian Islands more recently, as stowaways on ships sometime in the late 19th century (Atkinson and Atkinson 2000, p. 25). The Polynesian rat and the black rat are primarily found in the wild, in dry to wet habitats, while the Norway rat is typically found in manmade habitats such as urban areas or agricultural fields (Tomich 1986, p. 41). The black rat is widely distributed among the main Hawaiian Islands and can be found in a broad range of ecosystems up to 9,744 ft (2,970 m), but it is most common at low-to mid-elevations (Tomich 1986, pp. 38–40). While Sugihara (1997, p. 194) found both the black and Polynesian rats up to 6,972 ft (2,125 m) elevation on Maui, the Norway rat was not seen at the higher elevations in his study. Rats occur in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff), and predation by rats threatens 11 of the 13 plant species proposed for listing in this rule (rats are not a reported threat to the proposed picture-wing fly or anchialine pool shrimp (see Table 3)).

Rats impact native plants by eating fleshy fruits, seeds, flowers, stems, leaves, roots, and other plant parts (Atkinson and Atkinson 2000, p. 23), and can seriously affect regeneration. Research on rats in forests in New Zealand has also demonstrated that, over time, differential regeneration as a consequence of rat predation may alter the species composition of forested areas (Cuddihy and Stone 1990, pp. 68–69). Rats have caused declines or even the total elimination of island plant species (Campbell and Atkinson 1999, cited in Atkinson and Atkinson 2000, p. 24). In the Hawaiian Islands, rats may consume as much as 90 percent of the seeds produced by some trees, or in some cases prevent the regeneration of forest species completely (Cuddihy and Stone 1990, pp. 68–69). All three species of rat (black, Norway, and Polynesian) have been reported to be a serious threat to many endangered or threatened Hawaiian plants (Stone 1985, p. 264; Cuddihy and Stone 1990, pp. 67–69). Plants with fleshy fruits are particularly susceptible to rat predation, including some of the species proposed for listing here. For example, the fruits of plants in the bellflower family (*e.g., Cyanea* spp.) appear to be a target of rat predation (Cuddihy and Stone 1990, pp. 67–69). In addition to both species of *Cyanea* (*Cyanea marksii* and *Cyanea tritomantha*), nine other species of plants proposed for listing are significantly impacted by rat predation, including *Bidens hillebrandiana* ssp. *hillebrandiana, B. micrantha* ssp. *ctenophylla* (Bio 2011, pers. comm.), *Cyrtandra nanawaleensis, Cyrtandra wagneri* (Lorence and Perlman 2007, pp. 357–361; Bio 2011, pers. comm.), *Pittosporum hawaiiense, Pritchardia lanigera, Schiedea diffusa* ssp. *macraei, Schiedea hawaiiensis,* and *Stenogyne cranwelliae* (Cuddihy and Stone 1990, pp. 67–69; Gon III and Tierney 1996, in litt.; Bio 2008, in litt.; Pratt 2008b, in litt.; Bio 2010, pers. comm.; HBMP 2010c; HBMP 2010f; HBMP 2010j; HBMP 2010k; PEPP 2010, pp. 101, 113; Pratt 2011f, in litt.). As rats occur in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Hawaii Island, the results from the above studies, in addition to direct observations from field biologists, suggest that rats can directly damage or destroy native plants.

Nonnative Fish

In Hawaii, the introduction of nonnative fish, including bait-fish, into anchialine pools may have been a major contributor to the decline of native shrimp. Predation by, and competition with, introduced nonnative fish is considered the greatest threat to native shrimp within anchialine pool ecosystems (Bailey-Brock and Brock 1993, p. 354; Brock 2004, pp. 13–17). These impacts are discussed further in *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence* below.

Invertebrates

Nonnative Slugs

Predation by nonnative slugs adversely impacts 5 of the 13 plant species (*Cyanea marksii, Cyanea tritomantha, Cyrtandra nanawaleensis, Cyrtandra wagneri,* and *Stenogyne cranwelliae;* see Table 3) proposed for listing through mechanical damage, destruction of plant parts, and mortality (U.S. Army Garrison 2006, p. 3–51; Joe 2006, p. 10; Lorence and Perlman 2007, p. 359; Bio 2008, in litt.; Perlman and Bio 2008, in litt.; HBMP 2010k). On Oahu, slugs have been reported to destroy *Cyanea calycina* and *Cyrtandra kaulantha* in the wild, and have been observed eating leaves and fruit of wild and cultivated individuals of *Cyanea* (Mehrhoff 1995, in litt.; Pratt and Abbott 1997, p. 13; U.S. Army Garrison 2006, pp. 3–34, 3–51). In addition, slugs have damaged individuals of other *Cyanea* and *Cyrtandra* species in the wild (Wood *et al.* 2001, p. 3; Sailer and Keir 2002, in litt., p. 3; PEPP 2007, p. 38; PEPP 2008, pp. 23, 49, 52–53, 57).

Little is known about predation of certain rare plants by slugs; however, information in the U.S. Army's 2005 ''Status Report for the Makua Implementation Plan'' indicates that slugs can be a threat to all species of *Cyanea* (U.S. Army Garrison 2006, p. 3–51). Research investigating slug herbivory and control methods shows that slug impacts on seedlings of *Cyanea* spp. results in up to 80 percent seedling mortality (U.S. Army Garrison 2006, p. 3–51). Slug damage has also been reported on other Hawaiian plants including *Argyroxiphium grayanum* (greensword), *Alsinidendron* sp., *Hibiscus* sp., *Schiedea kaalae* (maolioli), *Solanum sandwicense* (popolo aiakeakua), and *Urera* sp. (Gagne 1983, p. 190–191; Sailer 2002 cited in Joe 2006, pp. 28–34).

Joe and Daehler (2008, p. 252) found that native Hawaiian plants are more vulnerable to slug damage than nonnative plants. In particular, they found that the individuals of the endangered plant *Cyanea superba* and the plant *Schiedea obovata* had 50 percent higher mortality when exposed to slugs when compared to individuals of the same species that were protected within slug exclosures. Slug damage has been documented on the plant *Stenogyne cranwelliae* (HBMP 2010k). As slugs are found in three of the described ecosystems (lowland wet, montane wet, and wet cliff) on Hawaii Island, the data from the above studies, in addition to direct observations from field biologists, suggest that slugs can directly damage or destroy native plants.

Nonnative Western Yellow-Jacket Wasps

The western yellow-jacket wasp (*Vespula pensylvanica*) is a social wasp species native to the mainland of North America. It was first reported from Oahu in the 1930s (Nishida and Evenhuis in Sherley 2000, p. 121), and an aggressive race became established in 1977 (Gambino *et al.* 1987, p. 170). This species is now particularly abundant between 1,969 and 5,000 ft (600 and 1,524 m) in elevation (Gambino *et al.*

1990, pp. 1,088–1,095; Foote and Carson 1995, p. 371) on Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii Island (GISD 2012b). The western yellow-jacket wasp is an aggressive, generalist predator (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 and thus a greater impact on prey populations (Gambino *et al.* 1987, pp. 169–170). In Haleakala National Park on Maui, western yellow-jacket wasps were found to forage predominantly on native arthropods (Gambino *et al.* 1987, pp. 169–170; Gambino *et al.* 1990, pp. 1,088–1,095; Gambino and Loope 1992, pp. 15–21). Western yellow-jacket wasps have also been observed carrying and feeding upon recently captured adult Hawaiian *Drosophila* (Kaneshiro and Kaneshiro 1995, pp. 40–45). These wasps are also believed to feed upon picture-wing fly larvae within their host plants (Carson 1986, pp. 3–9). In addition, native picture-wing flies, including the species in this proposed rule, may be particularly vulnerable to predation by wasps due to their lekking (male territorial defensive displays during courtship and mating) behavior and conspicuous courtship displays that can last for several minutes (Kaneshiro 2006, pers. comm.). The concurrent arrival of the western yellow-jacket wasp and decline of picture-wing fly observations in some areas suggest that the wasp may have played a significant role in the decline of some of the picture-wing fly populations, including populations of the picture-wing fly proposed for listing in this rule (Carson 1986, pp. 3–9; Foote and Carson 1995, p. 371; Kaneshiro and Kaneshiro 1995, pp. 40–45; Science Panel 2005, pp. 1–23). As the western yellow-jacket wasp is widespread within three ecosystems (lowland mesic, montane mesic, and wet ecosystems) on Hawaii Island in which the two known occurrences of the proposed picture-wing fly occur, the results from the studies above, in addition to observations by field biologists, suggest that western yellow-jacket wasps can directly kill individuals of the picture-wing fly (Foote and Carson 1995, p. 371; Kaneshiro and Kaneshiro 1995, pp. 40–45; Science Panel 2005, pp. 1–23).

Nonnative Parasitoid Wasps

The number of native parasitic Hymenoptera (parasitic wasps) in Hawaii is limited, and only species in the family Eucoilidae are known to use Hawaiian picture-wing flies as hosts (Montgomery 1975, pp. 74–75; Kaneshiro and Kaneshiro 1995, pp. 44–45). However, several species of small parasitic wasps (Family Braconidae), including *Diachasmimorpha tryoni* (NCN), *D. longicaudata* (NCN), *Opius vandenboschi* (NCN), and *Biosteres arisanus* (NCN), were purposefully introduced into Hawaii to control nonnative pest tephritid fruit flies (Funasaki *et al.* 1988, pp. 105–160). These parasitic wasps are also known to attack other species of flies, including native flies in the family Tephritidae. While these parasitic wasps have not been recorded parasitizing Hawaiian picture-wing flies and, in fact, may not successfully develop in Drosophilidae, females will indiscriminately sting any fly larvae in their attempts to oviposit (lay eggs), resulting in mortality of the fly larvae (Evans 1962, pp. 468–483).

Nonnative Ants

Ants are not a natural component of Hawaii's arthropod fauna, and native species 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. 13–17). Ants can prey directly upon native arthropods, exclude them through interference or exploitation competition for food resources, or displace them by monopolizing nesting or shelter sites (Krushelnychy *et al.* 2005, p. 6). The threat of ant predation on the picture-wing fly species proposed for listing in this rule 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 additional suitable habitats (Staples and Cowie 2001, p. 55). These attributes allow some ants to destroy otherwise geographically isolated populations of native arthropods (Nafus 1993, pp. 19, 22–23).

At least 47 species of ants are known to be established in the Hawaiian Islands (Krushelnycky 2008, pp. 1–11), and at least 4 particularly aggressive 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)) have severely impacted the native insect fauna, likely including native picture-wing flies (Reimer 1993, pp. 13–17). Numerous other species of ants are recognized as threats to Hawaii's native invertebrates, and an unknown number of new species are established every few years (Staples and Cowie 2001, p. 53). As a group, ants occupy most of Hawaii's habitat types, from coastal to subalpine ecosystems; however, many species are still invading mid-elevation montane mesic forests, and few species have been able to colonize undisturbed montane wet ecosystems (Reimer 1993, pp. 13–17). The lowland forests are a portal of entry to the montane and subalpine ecosystems, and, therefore, because ants are actively invading increasingly elevated ecosystems, ants are more likely to occur in high densities in the lowland mesic and montane mesic ecosystems currently occupied by the picture-wing fly (Reimer 1993, pp. 13–17).

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 (Holway *et al.* 2002, pp. 181–233; 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 picture-wing fly proposed for listing in this rule. With few exceptions, native insects have been eliminated in habitats where the big-headed ant is present (Gagne 1979, p. 81; Gillespie and Reimer 1993, p. 22). Consequently, big-headed ants represent a threat to the picture-wing fly, in the lowland mesic and montane mesic ecosystems (Reimer 1993, pp. 14, 17; Holway *et al.* 2002, pp. 181–233; Daly and Magnacca 2003, pp. 9–10; Krushelnycky *et al.* 2005, p. 5).

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 the two known sites occupied by the picture-wing fly, we believe that the long-legged ant likely occurs within the lowland mesic ecosystem that supports the picture-wing fly due to the ant's aggressive nature and ability to spread and colonize new locations (Foote 2008, pers. comm.). 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 (*Agrotis* spp. and *Peridroma* spp.) in ant-infested areas. Nests of groundnesting 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 the proposed picture-wing fly in the lowland mesic ecosystem.

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 either of the two known sites occupied by the picture-wing fly, because of the ant's expanding range and its widespread occurrence in coastal, lowland dry, and lowland mesic habitats, we believe *S. papuana* is a threat to the picture-wing fly in the lowland mesic and montane mesic ecosystems.

Like *Solenopsis papuana, S. geminata* is also considered a significant threat to native invertebrates (Gillespie and Reimer 1993, pp. 21–33) and occurs on all the main Hawaiian Islands (Reimer *et al.* 1990, p. 42; Loope and Krushelnycky 2007, p. 70). 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 2012—*Ant Distribution Database*). *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 (GISD 2012c), and is included as one of five ant species listed among the ''100 of the World's Worst Invaders'' (Manaaki Whenua Landcare Research 2012—*Ant Distribution Database*). Although surveys have not been conducted to ascertain this species' presence in either of the two sites occupied by the picture-wing fly, because of the ant's expanding range and its widespread occurrence in coastal, lowland dry, and lowland mesic habitats, it is a potential threat to the picture-wing fly in the lowland mesic ecosystem.

The Argentine ant (*Iridomyrmex humilis*) was discovered on the island of Oahu in 1940, and is now established on all the main Hawaiian Islands (Reimer *et al.* 1990, p. 42). Argentine ants do not disperse by flight. Instead colonies are moved about with soil and construction material. The Argentine ant is found from coastal to subalpine ecosystems on the island of Maui, and on the slopes of Mauna Loa, in the lowland mesic and montane mesic ecosystems on Hawaii Island, the location of one of the two occurrences of the picture-wing fly (Hartley *et al.* 2010, pp. 83–94; Krushelnychy and Gillespie 2010, pp. 643–655). The Argentine ant has been documented to reduce populations, or even eliminate native arthropods in Haleakala National Park on Maui (Cole *et al.* 1992, pp. 1313–1322). On Maui, Argentine ants are significant predators on pest fruit flies (Wong *et al.* 1984, pp. 1454–1458), and Krushelychy and Gillespie (2010, pp. 643–655) found that Argentine ants on Hawaii Island are associated with the decline of an endemic phorid fly (*Megaselia* sp.). Krushelychy and Gillespie (2010, pp. 643–655) suggest that ants severely impact larval stages of many flies. While we are not aware of documented occurrences of predation by Argentine ants on picture-wing flies, including the species proposed for listing, these ants are considered to be a threat to native arthropods located at higher elevations (Cole *et al.* 1992, pp. 1313–1322) and thus potentially to the picture-wing fly that occurs from 2,000 ft to 4,500 ft (610 m to 1,372 m) in elevation, in the lowland mesic, montane mesic, and montane wet ecosystems (Science Panel 2005, pp. 1–23; Magnacca 2011b, pers. comm.).

The rarity or disappearance of native picture-wing fly species, including the species in this proposed rule, from historical observation sites over the past 100 years is due to a variety of factors. While there is no documentation that conclusively ties the decrease in picture-wing fly observations to the establishment of nonnative ants in lowland mesic, montane mesic, and montane wet ecosystems on Hawaii Island, the presence of nonnative ants in these habitats and the decline of picture-wing fly observations in some areas in these habitats suggest that nonnative ants may have played a role in the decline of some populations of the picture-wing fly proposed for listing in this rule. As nonnative predatory ants are found in three of the described ecosystems (lowland mesic, montane mesic, and montane wet) on Hawaii Island in which the picture-wing fly occurs, the data from the above studies, in addition to direct observations from field biologists, suggest that nonnative predatory ants contribute to the reduction in range and abundance of the picture-wing fly (Science Panel 2005, pp. 1–23).

Two-Spotted Leaf Hopper

Predation by the two-spotted leaf-hopper (*Sophonia rufofascia*) has been reported on plants in the genus *Pritchardia* throughout the main Hawaiian Islands and may be a threat to the plant *Pritchardia lanigera* proposed for listing in this rule (Chapin *et al.* 2004, p. 279). This nonnative insect damages the leaves it feeds on, typically causing chlorosis (yellowing due to disrupted chlorophyll production) to browning and death of foliage (Jones *et al.* 2000, pp. 171–180). The damage to plants can result in the death of affected leaves or the whole plant, owing to the combined action of its feeding and oviposition behavior (Alyokhin *et al.* 2004, p. 1). In addition to the mechanical damage caused by the feeding process, the insect may introduce plant pathogens that lead to eventual plant death (Jones *et al.* 2006, p. 2). The two-spotted leafhopper is a highly polyphagous insect (it feeds on many different types of food). Sixty-eight percent of its recorded host plant species in Hawaii are fruit, vegetable, and ornamental crops, and 22 percent are endemic plants, over half of which are rare and endangered (Alyokhin *et al.* 2004, p. 6). Its range is limited to below

4,000 ft (1,219 m) in elevation, unless there is a favorable microclimate. While there has been a dramatic reduction in the number of two-spotted leafhopper populations between 2005 and 2007 (possibly due to egg parasitism), this nonnative insect has not been eradicated, and predation by this nonnative insect remains a threat (Fukada 2007, in litt.). Chapin *et al.* (2004, p. 279) believe that constant monitoring of both wild and cultivated *Pritchardia* populations will be necessary to abate this threat.

Nonnative Beetles

The Hawaiian Islands now support several species of nonnative beetles (family Scolytidae, genus *Coccotrypes*), a few of which bore into and feed on the nuts produced by certain native and nonnative palm trees, including those in the genus *Pritchardia* (Swezey 1927, in litt.; Science Panel 2005, pp. 1–23; Magnacca 2011b, pers. comm.). Species of *Coccotrypes* beetles prefer trees with large seeds, like those of *Pritchardia* spp. (Beaver 1987, p. 11). Trees of *Pritchardia* spp. drop their fruit before the fruit reaches maturity due to the boring action of the *Coccotrypes* spp. Beetles, thereby reducing natural regeneration in the wild (Beaver 1987, p. 11; Magnacca 2005, in litt.; Science Panel 2005, pp. 1–23). The threat from *Coccotrypes* spp. beetles on *Pritchardia* spp. in Hawaii is expected to increase with time if the beetles are not controlled (Richardson 2011, pers. comm.). Although *Pritchardia* spp. are long-lived (up to 100 years), over time, *Coccotrypes* spp. beetles may severely impact Hawaiian species of *Pritchardia,* including *Pritchardia lanigera,* which is proposed for listing in this rule.

Summary of Factor C

We are unaware of any information that indicates that disease is a threat to any of the 15 species proposed for listing in this rule.

We consider predation by nonnative animal species (pigs, goats, cattle, sheep, mouflon sheep, rats, slugs, wasps, ants, the two-spotted leaf hopper, and beetles) to pose an ongoing threat to all 13 plant species and the picture-wing fly proposed for listing throughout their ranges for the following reasons:

(1) Observations and reports have documented that pigs, goats, cattle, sheep, and mouflon sheep browse and trample all 13 proposed plant species and the host plants of the picture-wing fly (see Table 3), in addition to other studies demonstrating the negative impacts of ungulate browsing and trampling on native plant species of the islands (Spatz and Mueller-Dombois 1973, p. 874; Diong 1982, p. 160; Cuddihy and Stone 1990, p. 67).

(2) Nonnative rats and slugs cause mechanical damage to plants and destruction of plant parts (branches, fruits, and seeds), and are considered a threat to 11 of the 13 plant species proposed for listing (see Table 3). All of the plants and the picture-wing fly proposed for listing are impacted by either introduced ungulates, as noted in item (1) above, or nonnative rats and slugs, or both.

(3) Predation of adults and larvae of Hawaiian picture-wing flies by the western yellow-jacket wasp has been observed, and it has been suggested that wasp predation has played a significant role in the dramatic declines of some populations of picture-wing flies (Carson 1986, pp. 3–9; Foote and Carson 1995, p. 371; Kaneshiro and Kaneshiro 1995, pp. 40–45; Science Panel 2005, pp. 1–23). Because western yellow-jacket wasps are found in the three ecosystems in which the picture-wing fly is found, and western yellow-jacket wasps are known to prey on picture-wing flies, we consider predation by the western yellow-jacket wasp to be a serious and ongoing threat to *Drosophila digressa.*

(4) Parasitic wasps purposefully introduced to Hawaii to control nonnative pest fruit flies will indiscriminately sting any fly larvae when attempting to lay their eggs. Predation by one or more of these nonnative parasitic wasps is a potentially serious threat to *Drosophila digressa.*

(5) Picture-wing flies are vulnerable to predation by ants, and the range of *Drosophila digressa* overlaps that of particularly aggressive, nonnative predatory ant species that currently occur from sea level to the montane mesic ecosystem (over 3,280 ft (1,000 m) elevation) on all of the main Hawaiian Islands. We therefore consider predation by these nonnative ants to be a threat to *Drosophila digressa.*

(6) The plant *Pritchardia lanigera* is vulnerable to predation by nonnative invertebrates. The two-spotted leafhopper has been observed on plants in the genus *Pritchardia* throughout the main Hawaiian Islands, and poses a threat to *Pritchardia lanigera* (Chapin *et al.* 2004, p. 279). Two-spotted leafhopper damage results in the death of affected leaves or the entire plant (Alyokhin *et al.* 2004, p. 1).

(7) Several species of nonnative beetles (*Coccotrypes* spp.) bore into and feed upon the seeds of the native palm genus *Pritchardia* (Swezey 1927, in litt.; Science Panel 2005, pp. 1–23; Magnacca 2011b, pers. comm.), which results in reduced natural regeneration of the plants (Beaver 1987, p. 11; Magnacca 2005, in litt.; Science Panel 2005, pp. 1–23).

These threats are serious and ongoing, act in concert with other threats to the species, and are expected to continue or increase in magnitude and intensity into the future without effective management actions to control or eradicate them. In addition, negative impacts to native Hawaiian plants on Hawaii Island from grazing and browsing by axis deer are likely should this nonnative ungulate increase in numbers and range on the island. The combined threat of ungulate, rat, and invertebrate predation on native Hawaiian flora and fauna suggests the need for immediate implementation of recovery and conservation actions.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Feral Ungulates

Nonnative ungulates pose a major ongoing threat to all 13 plant species, and to the picture-wing fly, through destruction and degradation of terrestrial habitat, and through direct predation of the 13 plant species (see Table 3). In addition, nonnative ungulates (feral goats and cattle) pose an ongoing threat to the anchialine pool shrimp through destruction and degradation of its anchialine pool habitat. Feral goats and cattle trample and forage on both native and nonnative plants around and near the pool opening at Lua O Palahemo, and increase erosion around the pool and sediment entering the pool. The State of Hawaii provides game mammal (feral pigs, goats, cattle, sheep, and mouflon sheep) hunting opportunities on 42 State-designated public hunting areas on the island of Hawaii (H.A.R. 13–123; Mello 2011, pers. comm.). The State's management objectives for game animals range from maximizing public hunting opportunities (*e.g.,* ''sustained yield'') in some areas to removal by State staff, or their designees, in other areas (H.A.R. 13–123). Ten of the 13 plant species (*Cyanea marksii, Cyanea tritomantha, Cyrtandra nanawaleensis, Cyrtandra wagneri, Phyllostegia floribunda, Pittosporum hawaiiense, Platydesma remyi, Pritchardia lanigera, Schiedea hawaiiensis,* and *Stenogyne cranwelliae*) and the picture-wing fly have occurrences in areas where terrestrial habitat may be manipulated for game enhancement and where game populations are maintained at prescribed levels using public hunting (Perlman *et al.* 2001, in litt.; Perlman *et al.* 2004, in litt.; Lorence and Perlman

2007, pp. 357–361; PEPP 2007, p. 61; Pratt 2007a, in litt.; Pratt 2007b, in litt.; Benitez *et al.* 2008, p. 58; Agorastos 2010, in litt.; HBMP 2010c; HBMP 2010e; HBMP 2010f; HBMP 2010g; HBMP 2010h; HBMP 2010i; HBMPk; PEPP 2010, p. 63; Bio 2011, pers. comm.; Evans 2011, in litt.; Perry 2011, in litt.; Magnacca 2011b, pers. comm.; H.A.R. 13–123). Public hunting areas are 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 protect areas from game mammals, the current number and locations of fences are not adequate to prevent habitat degradation and destruction for 14 of the 15 species, and the direct predation of the 13 plant species on Hawaii Island (see Table 3). However, the State game animal regulations are not designed nor intended to provide habitat protection, and there are no other regulations designed to address habitat protection from ungulates.

The capacity of Federal and State agencies and their nongovernmental partners in Hawaii to mitigate the effects of introduced pests, such as ungulates and weeds, is limited due to the large number of taxa currently causing damage (Coordinating Group on Alien Pest Species (CGAPS) 2009). Many invasive weeds established on Hawaii Island have currently limited but expanding ranges and are of concern. Resources available to reduce the spread of these species and counter their negative ecological effects are limited. Control of established pests is largely focused on a few invasive species that cause significant economic or environmental damage to public and private lands. Comprehensive control of an array of invasive pests and management to reduce disturbance regimes that favor certain invasive species remains limited in scope. If current levels of funding and regulatory support for invasive species control are maintained on Hawaii Island, the Service expects existing programs to continue to exclude or, on a very limited basis, control invasive species only in high-priority areas. Threats from established pests (*e.g.,* nonnative ungulates, weeds, and invertebrates) are ongoing and expected to continue into the future.

Introduction of Nonnative Species

Currently, four agencies are responsible for inspection of goods arriving in Hawaii (CGAPS 2009). The Hawaii Department of Agriculture (HDOA) inspects domestic cargo and vessels, and focuses on pests of concern to Hawaii, especially insects or plant diseases not yet known to be present in the State (HDOA 2009). The U.S. Department of Homeland Security-Customs and Border Protection (CBP) is responsible for inspecting commercial, private, and military vessels and aircraft, and related cargo and passengers arriving from foreign locations. Customs and Border Protection focuses on a wide range of quarantine issues involving non-propagative plant materials (processed and unprocessed); wooden packing materials, timber, and products; internationally regulated commercial species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); seeds and plants listed as noxious; soil; and pests of concern to the greater United States, such as pests of mainland U.S. forests and agriculture. The U.S. Department of Agriculture-Animal and Plant Health Inspection Service-Plant Protection and Quarantine (USDA–APHIS–PPQ) inspects propagative plant material, provides identification services for arriving plants and pests, conducts pest risk assessments, trains CBP personnel, conducts permitting and preclearance inspections for products originating in foreign countries, and maintains a pest database that, again, has a focus on pests of wide concern across the United States. The Service inspects arriving wildlife products, with the goal of enforcing the injurious wildlife provisions of the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371 *et seq.*), and CITES.

The State of Hawaii's unique biosecurity needs are not recognized by Federal import regulations. Under the USDA–APHIS–PPQ's commodity risk assessments for plant pests, regulations are based on species considered threats to the mainland United States and do not address many species that could be pests in Hawaii (Hawaii Legislative Reference Bureau (HLRB) 2002, pp. 1–109; USDA–APHIS–PPQ 2010, pp. 1–88; CGAPS 2009, pp. 1–14). Interstate commerce provides the pathway for invasive species and commodities infested with non-Federal quarantine pests to enter Hawaii. Pests of quarantine concern for Hawaii may be intercepted at Hawaiian ports by Federal agents, but are not always acted on by them because these pests are not regulated under Federal mandates. Hence, Federal protection against pest species of concern to Hawaii has historically been inadequate. It is possible for the USDA to grant Hawaii protective exemptions under the ''Special Local Needs Rule,'' when clear and comprehensive arguments for both agricultural and conservation issues are provided; however, this exemption procedure operates on a case-by-case basis. Therefore, that avenue may only provide minimal protection against the large diversity of foreign pests that threaten Hawaii.

Adequate staffing, facilities, and equipment for Federal and State pest inspectors and identifiers in Hawaii devoted to invasive species interdiction are critical biosecurity gaps (HLRB 2002, pp. 1–14; USDA–APHIS–PPQ 2010, pp. 1–88; CGAPS 2009, pp. 1–14). State laws have recently been passed that allow the HDOA to collect fees for quarantine inspection of freight entering Hawaii (*e.g.,* Act 36 (2011) H.R.S. 150A–5.3). Legislation passed and enacted on July 8, 2011 (H.B. 1568), now requires commercial harbors and airports in Hawaii to provide biosecurity and inspection facilities to facilitate the movement of cargo through the ports. This enactment is a significant step toward optimizing the biosecurity capacity in the State of Hawaii; however, only time will determine the true effectiveness of this Act (Act 202(11)). From a Federal perspective, there is a need to ensure that all civilian and military port and airport operations and construction are in compliance with the Act. The introduction of new pests to the State of Hawaii is a significant risk to federally listed species.

Nonnative Animal Species

Vertebrate Species

The State of Hawaii's laws prohibit the importation of all animals unless they are specifically placed on a list of allowable species (HLRB 2002, pp. 1–109; CGAPS 2010, pp. 1–14). The importation and interstate transport of invasive vertebrates is federally regulated by the Service under the Lacey Act as ''injurious wildlife'' (Fowler *et al.* 2007, pp. 353 – 359); the list of vertebrates considered ''injurious wildlife'' is provided at 50 CFR 16. However, the law in its current form has limited effectiveness in preventing invasive vertebrate introductions into the State of Hawaii. On June 21, 2012, a new State law, Act 144 (''Relating to Wildlife'') was signed into law. This Act prohibits the interisland possession, transfer, transport, or release after transport of wild or feral deer, and establishes mandatory fines. On June 21, 2012, Act 149 (''Relating to Emergency Rules for Threats to Natural Resources or the Health of the Environment'') was also signed into State law. Act 149 expands the ability of State agencies to adopt emergency rules to address

situations that impose imminent threats to natural resources (Aila 2012a, in litt.; Martin 2012, in litt.). However, the effectiveness of these two recently enacted laws has not yet been demonstrated.

Invertebrate Species

Predation by nonnative invertebrate pests (slugs, wasps, ants, leafhoppers, and beetles) threaten 6 of the 13 the plant species and the picture-wing fly (see Table 3). It is likely that the introduction of most nonnative invertebrate pests to the State has been and continues to be accidental and incidental to other intentional and permitted activities. Although Hawaii State government and Federal agencies have regulations and some controls in place (see above), the introduction and movement of nonnative invertebrate pest species between islands and from one watershed to the next continues. For example, an average of 20 new alien invertebrate species have been introduced to Hawaii per year since 1970, an increase of 25 percent over the previous totals between 1930 and 1970 (The Nature Conservancy of Hawaii (TNCH) 1992, p. 8). Existing regulatory mechanisms therefore appear inadequate to ameliorate the threat of introductions of nonnative invertebrates, and we have no evidence to suggest that any changes to these regulatory mechanisms are anticipated in the future.

Nonnative Plant Species

Nonnative plants destroy and modify habitat throughout the ranges of 14 of the 15 species proposed for listing in this rule (see Table 3, above). As such, they represent a serious and ongoing threat to each of these species. In addition, nonnative plants have been shown to outcompete native plants and convert native-dominated plant communities to nonnative plant communities (see ''Habitat Destruction and Modification by Nonnative Plants'' above).

The State of Hawaii allows the importation of most plant taxa, with limited exceptions, if shipped from domestic ports (HLRB 2002; USDA–APHIS–PPQ 2010; CGAPS 2010). Hawaii's plant import rules (H.A.R. 4–70) regulate the importation of 13 plant taxa of economic interest; regulated crops include pineapple, sugarcane, palms and pines. Certain horticultural crops (*e.g.,* orchids) may require import permits and have pre-entry requirements that include treatment or quarantine or both, prior to or following entry into the State. The State noxious weed list (H.A.R. 4–68) and USDA–APHIS–PPQ's Restricted Plants List restrict the import of a limited number of noxious weeds. If not specifically prohibited, current Federal regulations allow plants to be imported from international ports with some restrictions. The Federal Noxious Weed List (see 7 CFR 360.200) includes few of the many globally known invasive plants, and plants in general do not require a weed risk assessment prior to importation from international ports. The USDA–APHIS–PPQ is in the process of finalizing rules to include a weed risk assessment for newly imported plants. 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 for the reasons described above. In addition, government funding is inadequate to provide for sufficient inspection services and monitoring.

In 1995, the Coordinating Group on Alien and Plant Species (CGAPS), a partnership comprised primarily of managers from every major Federal, State, County, and private agency and organization involved in invasive species work in Hawaii, 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 continue 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 2009; H.R.S. 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* spp. (pampas grass), coqui frogs (*Eleutherodactylus coqui*), and ants (HISC 2009). However, in early 2009, HISC projected that, due to a tighter economy in Hawaii and anticipated budget cuts in State funding support of up to 50 percent, there will be a serious setback in conservation achievements, and the loss of experienced, highly trained staff (HISC 2009).

The Lua O Palahemo anchialine pool is located in a remote, largely undeveloped area, but is well known and frequently visited by residents and visitors for recreational opportunities, as indicated by the numerous off-road vehicle tracks around the pool (USFWS 2012 in litt.; Richardson 2012, in litt., pp. 1–2). As of the 2010 survey, a sign posted near Lua O Palahemo indicates that individuals who disturb the site are subject to fines under Haw. Rev. Stat. 6E (Hawaii's State Historic Preservation Act (SHPA)). This statute makes it unlawful for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the State. Violators are subject to fines of not less than $500 nor more than $10,000 for each separate offense. However, sometime between the 2010 survey and the June 2012 visit by Service biologists, the sign had been removed (Richardson 2012, in litt., pp. 1–2). *Vetericaris chaceorum* is not protected under Hawaii's endangered species law (Haw. Rev. Stat. Sect. 195–D).

On the basis of the above information, existing State and Federal regulatory mechanisms are not adequately preventing the introduction of nonnative species to Hawaii via interstate and international mechanisms, or intrastate movement of nonnative species between islands, watersheds, and anchialine pools in Hawaii, and thus do not adequately protect 14 of the 15 species (all except the anchialine pool shrimp) proposed for listing in this proposed rule from the threat of new introductions of nonnative species, or from and the continued expansion of nonnative species populations on and between islands, watersheds, and anchialine pools. Nonnative species may prey upon, modify, or destroy habitat, or directly compete with one or more of the 14 species for food, space, and other necessary resources. The impacts from these introduced threats are ongoing and are expected to continue into the future.

We do not believe that existing regulatory mechanisms provide adequate protection for the anchialine pool shrimp, *Vetericaris chaceorum,* from the intentional dumping of trash and introduction of nonnative fish into Lua O Palahemo (see *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence*). Existing regulatory mechanisms are therefore inadequate to ameliorate the threat of introductions of trash and nonnative

fish into Lua O Palahemo, and we have no evidence to suggest that any changes to these regulatory mechanisms are anticipated in the future.

Summary of Inadequacy of Existing Regulatory Mechanisms

The State's current management of nonnative game mammals is inadequate to prevent the degradation and destruction of habitat of the 13 plant species, and the picture-wing fly (*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*), and to prevent predation of all 13 plant species (Factor C. *Disease or Predation*).

Existing State and Federal regulatory mechanisms are not effectively preventing the introduction and spread of nonnative species from outside the State of Hawaii and between islands and watersheds within the State of Hawaii. Habitat-altering nonnative plant species (*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*) and predation by nonnative animal species (*Factor C. Disease or Predation*) pose a major ongoing threat to all 15 species proposed for listing in this proposed rule.

Existing State and Federal regulatory mechanisms do not provide adequate protection for the anchialine pool shrimp, *Vetericaris chaceorum,* from the intentional dumping of trash and introduction of nonnative fish into Lua O Palahemo (see *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence*).

Because these regulatory mechanisms are inadequate to maintain habitat for the 15 species, and to prevent the spread of nonnative species (including nonnative fish into the Lua O Palahemo anchialine pool), the inadequacy of existing regulatory mechanisms is considered a serious threat, both now and in the future. Habitat degradation and loss caused by nonnative plants are a threat to each of the 13 plant species and the picture-wing fly (*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*), and nonnative animals (including nonnative fish) are a threat to the 15 species (*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* and *Factor C. Disease or Predation*). Therefore, the inadequacy of the regulatory mechanisms to prevent the dumping of trash and introduction of nonnative fish into anchialine pool shrimp habitat, and to address threats posed by other nonnative species threatens these 15 species.

Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence

Other factors threatening some or all of the 15 species include dumping of trash and the introduction of nonnative fish, small numbers of populations and small population sizes, hybridization, lack of or declining regeneration, loss of host plants, and other activities. Each threat is discussed in detail below, along with identification of which species are affected by these threats.

Dumping of Trash and Introduction of Nonnative Fish

The depressional features of anchialine pools make them susceptible to dumping. Refuse found in degraded pools and pools that have been filled in with rubble have been dated to about 100 years old, and the practice continues today (Brock 2004, p. 15). Lua O Palahemo is located approximately 558 ft (170 m) from a sandy beach frequented by visitors who fish and swim. In addition, there are multiple dirt roads that surround the pool making it highly accessible. Plastic bags, paper, fishing line, water bottles, soda cans, radios, barbed wire, and a bicycle have been documented within the pool (Kensley and Williams 1986, pp. 417–418; Bozanic 2004, p. 1; Wada 2010, in litt). Physical trash is likely to increase the accumulation of sediment in the pool portion of Lua O Palahemo, and could affect adequate water flushing as well, by blocking the currently narrow passage into the much larger water body in the lava tube below. Introduction of trash involving chemical contamination into anchialine pools, as has been observed elsewhere on Hawaii Island (Brock 2004, pp. 15–16), could more drastically affect water quality and result in local extirpation of hypogeal shrimp species.

In general, the accidental or intentional introduction and spread of nonnative fish (bait and aquarium fish) is considered the greatest threat to anchialine pools in Hawaii (Brock 2004, p. 16). Maciolek (1983, p. 612) found that the abundance of shrimp in a given population is indirectly related to predation by fish. The release of mosquito fish (*Gambusia affinis*) and tilapia (*Tilapia mossambica*) into the Waikoloa Anchialine Pond Preserve (WAAPA) at Waikoloa, North Kona, Hawaii, resulted in the infestation of all ponds within an approximately 3.2-ha (8-ac) area, which represented approximately two-thirds of the WAAPA. Within 6 months, all native hypogeal shrimp species disappeared (Brock 2004, pp. iii). Nonnative fish drive anchialine species out of the lighted, higher productivity portion of the pools, into the surrounding water table bed rock, subsequently leading to the decimation of the benthic community structure of the pool (Brock 2004, p. iii). In addition, nonnative fish prey on and exclude native hypogeal shrimp that are usually a dominant and essential (Brock 2004, p. 16) faunal component of anchialine pool ecosystems (Bailey-Brock and Brock 1993, pp. 338–355). The loss of the shrimp changes ecological succession by reducing herbivory of macroalgae, allowing an overgrowth and change of pool flora. This overgrowth changes the system from clear, well-flushed basins to a system characterized by heavy sedimentation and poor water exchange, which increases the rate of pool senescence (Brock 2004, p. 16). Nonnative fish, unlike native fish, are able to complete their life cycles within anchialine habitats, and remain a permanent detrimental presence in all pools in which they are introduced (Brock 2004, p. 16). In Hawaii, the most frequently illegally introduced fish are in the Poeciliidae family (freshwater fish which bear live young) and include mosquito fish, various mollies (*Poecilia* spp.), and tilapia, which prey on and exclude native hypogeal shrimp such as the herbivorous species upon which *Vetericaris chaceorum* presumably feed. More than 90 percent of the 600 to 700 anchialine habitats in Hawaii have been degraded in the last 30 years due to the introduction of nonnative fish (Brock 2004, p. 24).

Lua O Palahemo is highly accessible to off-road vehicle traffic and located near an area frequented by residents and visitors for fishing and other outdoor recreational activities. We believe the pool is vulnerable to the intentional dumping of trash and introduction of nonnative fish (bait and aquarium fish) because the area is easily accessible to vehicles and human traffic, and yet due to its remote location, is far from regulatory oversight by the DHHL or DAR. According to Brock (2012, pers. comm.), sometime in the 1980s, nonnative fish were introduced into Lua O Palahemo. It is our understanding that the fish were subsequently removed with a fish poison, and to our knowledge the pool currently remains free of nonnative fish. The most commonly used piscicide (fish pesticide) in the United States for management of fish in freshwater systems is a naturally occurring chemical, marketed as a product called Rotenone. Unfortunately, Rotenone use in marine systems (including anchialine

pools) is illegal according to the Environmental Protection Agency (EPA 2007, pp. 22–23; Finlayson et al. 2010, p. 2).

More than 90 percent of Hawaii's anchialine pool habitats have been degraded or destroyed by the intentional dumping of trash and introduction of nonnative fish. Because the anchialine pool shrimp *Vetericaris chaceorum* is only known from one pool, the introduction of nonnative fish which prey on and exclude native hypogeal shrimp like *Vetericaris chaceorum* or its associated prey shrimp species would likely lead to the extirpation of this species, directly or indirectly due to the lower abundance of co-occurring shrimp species that provide food resources to *Vetericaris chaceorum.* In addition, the loss of native shrimp species leads to changes in ecological succession in anchialine pools, leading to senescence of the pool habitat, thereby rendering the pool unsuitable habitat (Brock 2004, p. 16).

Small Number of Individuals and Populations

Species that are endemic to single islands are inherently more vulnerable to extinction than are widespread species, because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change effects, and localized catastrophes such as hurricanes, drought, rockfalls, landslides, and disease outbreaks (Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607). These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals in each population 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 (Gilpin and Soulé 1986, pp. 24–34). Small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (*e.g.,* Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Very small, isolated populations are also more susceptible to reduced reproductive vigor due to ineffective pollination (plants), inbreeding depression (plants and shrimp), and hybridization (plants and flies). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (see *Factor A* and *Factor C* above).

Plants

A limited number of individuals (fewer than 50 individuals) is a threat to the following six plant species in this proposal: *Bidens hillebrandiana* ssp. *hillebrandiana, Cyanea marksii, Cyrtandra wagneri, Platydesma remyi, Schiedea diffusa* ssp. *macraei,* and *S. hawaiiensis.* We consider these species highly vulnerable to extinction due to threats associated with small population size or small number of populations because:

- The only known occurrences of *Bidens hillebrandiana* ssp. *hillebrandiana, Cyanea marksii,* and *Cyrtandra wagneri* are threatened either by landslides, rockfalls, or erosion, or a combination of these, because of their locations in lowland wet, montane wet, and dry cliff ecosystems.
- *Platydesma remyi* is known from fewer than 40 scattered individuals (Stone *et al.* 1999, p. 1210; HBMP 2010i). Declining or lack of regeneration in the wild appears to threaten this species.
- *Schiedea diffusa* ssp. *macraei* is known from a single individual in the Kohala Mountains (Perlman *et al.* 2001, in litt.; Wagner *et al.* 2005d, p. 106; HBMP 2010j; Bio 2011, pers. comm.).
- Habitat destruction or direct predation by ungulates, nonnative plants, drought, and fire are threats to the 25 to 40 individuals of *Schiedea hawaiiensis* (Mitchell *et al.* 2005a; NDMC 2012–*Online Archives*).

Animals

Like most native island biota, the endemic anchialine pool shrimp and Hawaiian picture-wing fly are particularly sensitive to disturbances due to low number of individuals, low population numbers, and small geographic ranges. We consider the picture-wing fly vulnerable to extinction due to threats associated with low number of individuals and low number of populations because *Drosophila digressa* is known from only two of its five historically known locations. The following threats to this species have all been documented: Predation by nonnative wasps and ants; habitat degradation and destruction by nonnative ungulates, fire, and drought; loss of its host plants; and competition with nonnative flies for its host plants (Science Panel 2005, pp. 1–23; Magnacca 2011b, pers. comm.).

Hybridization

Natural hybridization is a frequent phenomenon in plants and can lead to the formation of new species (Orians 2000, p. 1,949), or sometimes to the decline of species through genetic assimilation or ''introgression'' (Ellstrand 1992, pp. 77, 81; Levine *et al.* 1996, pp. 10–16; Rhymer and Simberloff 1996, p. 85). Hybridization, however, is especially problematic for rare species that come into contact with species that are abundant or more common (Rhymer and Simberloff 1996, p. 83). We consider hybridization to be a threat to three species, and potentially a threat to one more species in this proposed rule because hybridization may lead to extinction of the original genotypically distinct species. Hybrid swarms (hybrids that can interbreed among themselves and also with the parent species) have been reported between the plant *Bidens micrantha* ssp. *ctenophylla* and *B. menziesii* ssp. *filiformis* near Puuwaawaa in north Kona (Ganders and Nagata 1983, p. 12; Ganders and Nagata 1999, p. 278); the plant *Cyrtandra nanawaleensis* is known to hybridize with *C. lysiosepala* in and around the Nanawale FR (Price 2011, in litt.); and *Cyrtandra wagneri* is reported to hybridize with *C. tintinnabula.* Only eight individuals express the true phenotype of *C. wagneri,* and only three of these individuals are reproducing successfully (PEPP 2010, p. 102; Bio 2011, pers. comm.). Native species can also hybridize with related nonnative species. For example, native species of *Pittosporum,* including the plant *Pittosporum hawaiiense,* are known to exhibit high levels of gene flow, and hybridization between native *Pittosporum* and nonnative species of *Pittosporum* may occur when they occupy similar habitat and elevation (Daehler and Carino 2001, pp. 91–96; Bacon *et al.* 2011, p. 733).

Regeneration

Lack of, or low levels of, regeneration (reproduction and recruitment) in the wild has been observed, and is a threat to, *Pittosporum hawaiiense, Platydesma remyi,* and *Pritchardia lanigera* (Bio 2011, pers. comm.; Magnacca 2011b, pers. comm.). The reasons for this are not well understood: however, seed predation by rats, ungulates, and beetles is thought to play a role (Bio 2011, pers. comm.; Magnacca 2011b, pers. comm.). In addition, *Cyanea tritomantha* is reported to produce few seeds with low viability. The reasons for this are unknown (Bio 2008, in litt.).

Competition

Competition with nonnative tipulid flies (large crane flies, family Tipulidae) for larvae host plants threatens the picture-wing fly proposed for listing in this rule. The Hawaiian Islands now support several species of nonnative tipulid flies, and the larvae of some species within this group feed within the decomposing bark of some of the host plants utilized by picture-wing flies, including *Cheirodendron, Clermontia, Pleomele,* and *Charpentiera,* the host plant for *Drosophila digressa* (Science Panel 2005, pp. 1–23; Magnacca 2005, in litt.). The effect of this competition is a reduction of available host plant material for the larvae of the picture-wing fly. In laboratory studies, Grimaldi and Jaenike (1984, pp. 1,113–1,120) demonstrated that competition between *Drosophila* larvae and other fly larvae can exhaust food resources, which affects both the probability of larval survival and the body size of adults, resulting in reduced adult fitness, fecundity, and lifespan. Both soldier and nephritid flies have been suggested to impose a similar threat to Hawaiian picture-wing flies (Montgomery 2005, in litt.; Science Panel 2005, pp. 1–23).

Loss of Host Plant

Drosophila digressa is dependent on decaying stem bark from plants in the genus *Charpentiera* for oviposition and larval development (Montgomery 1975, p. 95). *Charpentiera* is considered highly susceptible to damage from alien ungulates, such as pigs and goats, as well as competition with nonnative plants (*e.g., Omalanthus populifolius, Schinus terebinthifolius,* and *Psidium cattleianum*) (Foote and Carson 1995, pp. 370–37; Science Panel 2005, pp. 1–23; Magnacca 2011b, pers.comm.). Bark-breeding *Drosophila* species are sensitive to bottlenecks in host plant populations due to their dependence on older, senescent or dying plants (Magnacca *et al.* 2008, p. 32). Altered decay cycles in host plants caused by genetic bottlenecks, or decreasing availability of host plants due to browsing and trampling by nonnative ungulates (pigs, goats, cattle, and mouflon), competition with nonnative plants, drought, or other phenomena can subsequently alter the life cycle of the picture-wing fly by disrupting the early stages of development. Predation by nonnative beetles (the branch and twig borer (*Amphicerus cornutus*), the black twig borer (*Xylosandrus compactus*), and weevils (*Oxydema fusiforme*) have been documented as threats to *Charpentiera* spp. (Medeiros *et al.* 1986, p. 29; Giffin 2009, p. 81).

Summary of Other Natural or Manmade Factors Affecting Their Continued Existence

We consider the threats from dumping of trash and introduction of nonnative fish into the pool that supports the anchialine pool shrimp proposed for listing in this rule to be serious threats that have the potential to occur at any time, although their occurrence is not predictable. The use of anchialine pools for dumping of trash and introduction of nonnative fish are widespread practices in Hawaii and have the potential to occur at any time at the Lua O Palahemo pool. Nonnative fish prey on or outcompete native herbivorous anchialine pool shrimp that serve as the prey base for predatory species of shrimp, including the anchialine pool shrimp proposed for listing in this rule.

We consider the threat from limited number of populations and few (less than 50) individuals to be a serious and ongoing threat to the 6 plant species proposed for listing (*Bidens hillebrandiana ssp. hillebrandiana, Cyanea marksii, Cyrtandra wagneri, Platydesma remyi, Schiedea diffusa* ssp. *macraei,* and *S. hawaiiensis*) because (1) these species may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression; (2) they may experience reduced levels of genetic variability, leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; and (3) a single catastrophic event may result in extirpation of remaining populations and extinction of the species. This threat applies to the entire range of each species.

The threat to the picture-wing fly from limited numbers of individuals and populations is ongoing and is expected to continue into the future because (1) this species may experience reduced reproductive vigor due to inbreeding depression; (2) it may experience reduced levels of genetic variability leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; (3) a single catastrophic event (*e.g.,* hurricane, drought) may result in extirpation of remaining populations and extinction of this species; and (4) species with few known locations, such as *Drosophila digressa,* are less resilient to threats that might otherwise have a relatively minor impact on widely-distributed species. For example, the reduced availability of host trees or an increase in predation of the picture-wing fly adults that might be absorbed in a widely-distributed species could result in a significant decrease in survivorship or reproduction of a species with limited distribution. The limited distribution of this species thus magnifies the severity of the impact of the other threats discussed in this proposed rule.

The threat from hybridization is unpredictable but an ongoing and ever-present threat to *Bidens micrantha* ssp. *ctenophylla, Cyrtandra nanawaleensis,* and *Cyrtandra wagneri,* and a potential threat to *Pittosporum hawaiiense.* We consider the threat to *Cyanea tritomantha, Pittosporum hawaiiense, Platydesma remyi,* and *Pritchardia lanigera* from lack of regeneration to be ongoing and to continue into the future because the reasons for the lack of recruitment in the wild are unknown and uncontrolled, and any competition from nonnative plants or habitat modification by ungulates or fire could lead to the extirpation of these species.

Competition for host plants with nonnative tipulid flies is a threat to *Drosophila digressa* and is expected to continue into the future because field biologists report that these nonnative flies are widespread and there is no mechanism in place to control their population growth. Loss of host plants (*Charpentiera* spp.) is a threat to the picture-wing fly, and we consider this threat to continue into the future because field biologists have reported that species of *Charpentiera* are declining in the wild.

Proposed Determination for 15 Species

We have carefully assessed the best scientific and commercial information available regarding threats to each of the 15 species proposed for listing. We find that each of the 13 plant species and the picture-wing fly face threats that are ongoing and expected to continue into the future throughout their ranges from the present destruction and modification of their habitats from nonnative feral ungulates and nonnative plants (Factor A). Destruction and modification of habitat by development and urbanization is a threat to one plant species (*Bidens micrantha* ssp. *ctenophylla*). Habitat destruction and modification from fire is a threat to three of the plant species (*Bidens micrantha* ssp. *ctenophylla, Phyllostegia floribunda,* and *Schiedea hawaiiensis*) and the picture-wing fly. Destruction and modification of habitat from rockfalls, landslides, treefalls, or heavy rain is a threat to four plant species (*Bidens hillebrandiana* ssp.

hillebrandiana, Cyanea marksii, Cyanea tritomantha, and *Cyrtandra wagneri*). Habitat loss or degradation due to drought is a threat to two plants, *Bidens micrantha* ssp. *ctenophylla* and *Schiedea hawaiiensis,* as well as to the picture-wing fly. We are concerned about the effects of projected climate change on all species, particularly rising temperatures, but recognize there is limited information on the exact nature of impacts that these species may experience. In addition, habitat loss or degradation is a threat to the anchialine pool shrimp *Vetericaris chaceorum* due to sedimentation resulting from degradation of the immediate area surrounding the Lua O Palahemo anchialine pool. Sedimentation reduces both food productivity and the ability of Lua O Palahemo to support the anchialine pool shrimp (Factor A).

Overcollection for commercial and recreational purposes poses a threat to *Pritchardia lanigera* (Factor B).

Predation and herbivory on all 13 plant species by feral pigs, goats, cattle, sheep, mouflon, rats, slugs, two-spotted leaf hoppers, or beetles poses a serious and ongoing threat; as does predation of the picture-wing fly by nonnative wasps and ants (Factor C).

The inadequacy of existing regulatory mechanisms (*i.e.,* inadequate protection of habitat and inadequate protection from the introduction of nonnative species) poses a serious and ongoing threat to all 15 species (Factor D). There are serious and ongoing threats to six plant species (*Bidens hillebrandiana* ssp. *hillebrandiana, Cyanea marksii, Cyrtandra wagneri, Platydesma remyi, Schiedea diffusa* ssp. *macraei,* and *S. hawaiiensis*) and the picture-wing fly due to factors associated with small numbers of populations and individuals; to *Bidens micrantha* ssp. *ctenophylla, Cyrtandra nanawaleensis, Cyrtandra wagneri,* and potentially to *Pittosporum hawaiiense* from hybridization; to *Cyanea tritomantha, Pittosporum hawaiiense, Platydesma remyi, and Pritchardia lanigera* from the lack of regeneration in the wild; and to the picture-wing fly from competition for host plants with nonnative flies and declining numbers of host plants. The anchialine pool shrimp is threatened by the intentional dumping of trash and introduction of nonnative fish into its only known location. Nonnative fish drive anchialine species out of the lighted, highly productive portion of the pools into the surrounding water table bed rock, subsequently leading to the decimation of the benthic community structure of the pool, and prey on and exclude native hypogeal shrimp that are usually a dominant and essential faunal component of anchialine pool ecosystems. Because anchialine pool health and the presence of hypogeal shrimp are interdependent, the loss of the shrimp changes ecological succession by reducing herbivory of cyanobacteria and macroalgae allowing an overgrowth and change of pool flora. This overgrowth changes the system from clear, well-flushed basins to a system characterized by heavy sedimentation and poor water exchange which increases the rate of pool senescence (Bailey-Brock and Brock 1993, pp. 338–355; Brock 2004, pp. iii and 16) (Factor E) (see Table 3). These threats are exacerbated by these species' inherent vulnerability to extinction from stochastic events at any time because of their endemism, small numbers of individuals and populations, and restricted habitats.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that each of these 15 endemic species is presently in danger of extinction throughout its entire range, based on the severity and scope of the ongoing and projected threats described above. These threats are exacerbated by small population sizes, the loss of redundancy and resiliency of these species, and the continued inadequacy of existing protective regulations. Therefore, on the basis of the best available scientific and commercial information, we have determined that each of these species 15 species meets the definition of an endangered species under the Act. We therefore propose to list the following 15 species as endangered species in accordance with section 3(6) of the Act: The plants *Bidens hillebrandiana* ssp. *hillebrandiana, B. micrantha* ssp. *ctenophylla, Cyanea marksii, Cyanea tritomantha, Cyrtandra nanawaleensis, Cyrtandra wagneri, Phyllostegia floribunda, Pittosporum hawaiiense, Platydesma remyi, Pritchardia lanigera, Schiedea diffusa* ssp. *macraei, Schiedea hawaiiensis,* and *Stenogyne cranwelliae;* the anchialine pool shrimp, *Vetericaris chaceorum;* and the picture-wing fly, *Drosophila digressa.*

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Each of the 15 Hawaii Island species proposed for listing in this rule is highly restricted in its range, and the threats occur throughout its range. Therefore, we assessed the status of each species throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' ranges and are not restricted to any particular portion of those ranges. Accordingly, our assessment and proposed determination applies to each species throughout its entire range, and we do not need to further consider the status of each species in a significant portion of their respective ranges.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies: Private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities involving listed animals and plants are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that help to determine when a species may be downlisted or delisted, and methods for

monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outlines, draft recovery plans, and the final recovery plans will be available from our Web site (*http://www.fws.gov/endangered*), or from our Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private and State lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the State of Hawaii would be eligible for Federal funds to implement management actions that promote the protection and recovery of the 15 species. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although these species are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) of the Act mandates that all Federal agencies shall utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species listed pursuant to section 4 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. If a Federal action may affect the continued existence of a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

For the 15 plants and animals proposed for listing as endangered species in this rule, Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, actions within the jurisdiction of the Natural Resources Conservation Service, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and branches of the Department of Defense (DOD). Examples of these types of actions include activities funded or authorized under the Farm Bill Program, Environmental Quality Incentives Program, Ground and Surface Water Conservation Program, Clean Water Act (33 U.S.C. 1251 et seq.), Partners for Fish and Wildlife Program, and DOD construction activities related to training or other military missions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife and plants. The prohibitions, codified at 50 CFR 17.21 for wildlife and 17.61 for plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered or threatened wildlife or plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.62 for endangered wildlife and plants, respectively. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation and survival of the species, and for incidental take in connection with otherwise lawful activities. For endangered plants, a permit must be issued for scientific purposes or for the enhancement of propagation or survival. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; however, this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the 15 species, such as the introduction of competing, nonnative plants or animals to the State of Hawaii; and

(3) The unauthorized release of biological control agents that attack any life stage of these 15 species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be

addressed to the U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Endangered Species Permits, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

If made final, Federal listing of the 15 species included in this rule would automatically invoke State listing under Hawaii's Endangered Species law (H.R.S. 195D 1–32) and supplement the protection available under other State laws. These protections would prohibit take of these species and encourage conservation by State government agencies. Further, the State would be able to enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (H.R.S. 195D–5). Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species would be reinforced and supplemented by protection under State law.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public access to private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where a landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical or biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species. Under the Act and regulations at 50 CRF 424.12(e), we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine to be necessary for the recovery of the species, as additional scientific information may become available in the future. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects to allow us to incorporate this information into our current designation of critical habitat, nor are we currently aware of any climate change information specific to the habitat of any of the species being addressed in this proposed rule that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the proposed critical habitat for these species; however, we specifically request information from the public on the currently predicted effects of climate change on the species addressed in this proposed rule and their habitats. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas we may eventually determine are necessary for the recovery of the species, based on scientific data

now available to the Service. For these reasons, a critical habitat designation does not signify that habitat outside of the designated area is unimportant or may not be required for the recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may require consultation under section 7 of the Act and may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), section 7 consultations, or other species conservation planning efforts if any new information available to these planning efforts calls for a different outcome.

Prudency Determination for 15 Proposed Species and 2 Listed Species on Hawaii Island

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

As we have discussed under the threats analysis for Factor B, above, there is currently no documentation that 14 of the 15 species proposed for listing are threatened by taking or other human activity. Overcollection is a threat to the plant *Pritchardia lanigera* (see ''*Overutilization for Commercial, Recreational, Scientific or Educational Purposes,*'' above). Rare palm trees are highly desirable to collectors, and there is an active Internet sale and online auction market for their seeds and seedlings, including *P. lanigera* (rarepalmseeds.com 2011; junglemusic.net 2012; ebay.com 2012). Several nurseries advertise and sell seedlings and young plants, including at least 13 species of Hawaiian *Pritchardia*. Seven of these species are federally protected, including *P. affinis* and *P. schattaueri* on Hawaii Island (ebay.com 2012; junglemusic.net 2012). Seeds of the endangered *P. hardyi* on Kauai have been illegally removed from an outplanting site in the past (75 FR 18960, April 13, 2010), and there is evidence of vandalism and illegal collection of other species of endangered *Pritchardia* palms on Kauai (75 FR 18960, April 13, 2010). In the 1990s, seeds of the endangered *P. schattaueri* were removed from plants in two of the three locations on Hawaii Island where this species was known at that time (PEPP 2007, in litt.). We do not believe that the designation of critical habitat for *P. lanigera* will increase the threat of overcollection for the following reasons: (1) The area of the known locations is extremely difficult to access because most of the rigorous and steep trails leading into Waimanu and neighboring valleys were destroyed in the 2005 Kona earthquake (Magnacca 2011b, pers. comm.); and (2) critical habitat designation, as proposed, does not identify the specific location of individual species . In addition, we believe that the potential benefit to *P. lanigera* from designating critical habitat is that the designation could serve to educate landowners, State and local government agencies, and the general public regarding the potential conservation value of the area. Therefore, we find that the designation of critical habitat for *P. lanigera* is prudent.

At the time we listed the plant *Mezoneuron kavaiense* (uhiuhi) as endangered we found that designation of critical habitat was not prudent because publication of the location of a species-specific critical habitat description would increase the risk of taking or vandalism, while providing no additional benefit to the species (51 FR 24672; July 8, 1986). However, we have examined the best available information and found no current information to indicate that this plant is currently threatened by overcollection or vandalism, or is otherwise used for commercial, recreational, scientific, or educational purposes. Thus, we believe there is a benefit to a critical habitat designation for this species (see discussion below). Moreover, we have no current information to indicate that identification of critical habitat is expected to initiate such a threat to any of the other species addressed in this proposed rule.

We reviewed the information available for the 13 plants, anchialine pool shrimp, and picture-wing fly proposed for listing in this rule, and the endangered plant *Mezoneuron kavaiense,* pertaining to the biological needs of these 16 species and characteristics of their last known habitats. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits to the 15 species proposed for listing and the endangered plant *Mezoneuron kavaiense* include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. We find that the designation of critical habitat for each of the 15 species proposed for listing in this rule and the endangered plant *Mezoneuron kavaiense* would benefit them by serving to focus conservation efforts on the restoration and maintenance of ecosystem functions that are essential for attaining their recovery and long-term viability. In addition, the designation of critical habitat serves to inform management and conservation decisions by identifying any additional physical or biological features of the ecosystem that may be essential for the conservation of certain species. Therefore, as we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the following 16 species, as critical habitat would be beneficial and there is no evidence that the designation of critical habitat would result in an increased threat from taking or other human activity for these species:

(1) Plants— *Bidens hillebrandiana* ssp. *hillebrandiana, Bidens micrantha* ssp. *ctenophylla, Cyanea marksii,*

Cyanea tritomantha, Cyrtandra nanawaleensis, Cyrtandra wagneri, Mezoneuron kavaiense, Phyllostegia floribunda, Pittosporum hawaiiense, Platydesma remyi, Pritchardia lanigera, Schiedea diffusa ssp. *macraei, Schiedea hawaiiense,* and *Stenogyne cranwelliae;*

(2) Animals— insects: *Drosophila digressa;* crustaceans: *Vetericaris chaceorum.*

In this rule, we are also proposing critical habitat for the listed plant, *Isodendrion pyrifolium.* We previously found that critical habitat is prudent and determinable (67 FR 36968; May 28, 2002) for *Isodendrion pyrifolium* on Hawaii Island, but we did not designate any critical habitat for the species in 2003, as discussed below.

Critical Habitat Determinability for 16 Species on Hawaii Island

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing ''to the maximum extent prudent and determinable.'' Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

Pursuant to section 4(a)(3) of the Act we are to designate critical habitat to the maximum extent prudent and determinable at the time a species is proposed for listing. In our previous discussion, we indicated that the designation of critical habitat would provide a benefit for the 15 species proposed for listing in this rule, and the plant, *Mezoneuron kavaiense* listed as endangered in 1986 (51 FR 24672; July 8, 1986). As a consequence, we determined that the designation of critical habitat for these 16 species is prudent.

Next we are to evaluate whether the designation of critical habitat is determinable, and if so, propose critical habitat concurrent with our proposed listing. At this time, we have found that the designation of critical habitat is determinable for only one species that we are proposing to list, *Bidens micrantha* ssp. *ctenophylla,* and are including critical habitat for it in this proposal. We also find that the designation of critical habitat is determinable for the listed plant, *Mezoneuron kavaiense,* and are including critical habitat for it in this proposal. In addition, we are including critical habitat for a third species, the plant *Isodendrion pyrifolium* listed as endangered in 1994 (59 FR 10305; March 4, 1994). We had previously determined that critical habitat was prudent and determinable (67 FR 36968; May 28, 2002) and proposed areas as critical habitat for *Isodendrion pyrifolium* on Hawaii Island. However, in the final rule for Hawaii Island plants (68 FR 39624, July 2, 2003), the areas proposed for critical habitat for this species were excluded from final designation under section 4(b)(2) of the Act (see discussion regarding ''Reconsideration of Lands Previously Excluded Under Section 4(b)(2) of the Act'').

The species *Bidens micrantha* ssp. *ctenophylla,* which is proposed for listing in this rule, and the listed species *Isodendrion pyrifolium* and *Mezoneuron kavaiense* co-occur in the same lowland dry ecosystem on the island of Hawaii. These three species (*Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense*) share many of the same physical or biological features (*e.g.,* elevation, annual rainfall, substrate, associated native plant genera) as well as the same threats from development, fire, and nonnative ungulates and plants. In this proposed rule, we have identified areas that provide the physical or biological features essential for the conservation of these three species and areas that are essential for the conservation of these three species in the lowland dry ecosystem on the island of Hawaii. Therefore, we find that critical habitat is determinable for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* in this rule.

However, for the remaining 14 species proposed for listing in this rule, we do not have the analysis necessary to refine the identification of the physical and biological features and delineate the specific areas that contain those features in the appropriate arrangement and quantity or the specific unoccupied areas essential to the species' conservation. As a result, we find that for the remaining 14 species that we are proposing to list in this rule, the designation of critical habitat is not determinable at this time.

Proposed Critical Habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on Hawaii Island

In this section, we discuss the proposed designation of critical habitat for three plant species (*Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense*). *Bidens micrantha* ssp. *ctenophylla* is 1 of the 15 species proposed for listing in this rule, for which critical habitat was determined to be prudent and determinable. Critical habitat wa for *Isodendrion pyrifolium* on the island of Hawaii, but was excluded from designation as critical habitat under section 4(b)(2) of the Act in the final rule published on July 2, 2003 (68 FR 39624). In this proposed rule, we have determined that critical habitat is both prudent and determinable for the listed plant species *Mezoneuron kavaiense.*

Background for the Listed Plants Isodendrion pyrifolium and Mezoneuron kavaiense

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat on the island of Hawaii. For additional information on *Isodendrion pyrifolium* and its proposed critical habitat on Oahu, Molokai, and Maui, refer to the proposed rules for *Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species* (76 FR 46362; August 2, 2011) and the proposed rule *Listing 38 Species on Molokai, Lanai, and Maui as Endangered and Designating Critical Habitat on Molokai, Lanai, Maui, and Kahoolawe for 135 Species* (77 FR 34464; June 11, 2012). For additional information on the listed endangered plant *Mezoneuron kavaiense,* which does not have designated critical habitat in Hawaii, please refer to the listing rule published in the **Federal Register** on July 8, 1986 (51 FR 24672).

Currently designated critical habitat on the island of Hawaii includes critical habitat for the plant *Kokia drynarioides* (49 FR 47397, December 4, 1984), and 41 other listed plants (68 FR 39624, July 2, 2003), Blackburn's sphinx moth (68 FR 34710, June 10, 2003), and 3 picture-wing flies (73 FR 73794, December 4, 2008). Approximately 55 percent of the area being proposed as critical habitat in this rule overlaps with these areas previously designated as critical habitat. In some areas, the footprint of the proposed critical habitat is larger than the 1984, 2003, and 2008 designations, to accommodate the future expansion of one or more of the three species'

populations within the particular ecosystem in which they occur (*e.g.,* expansion into unoccupied habitat). The proposed critical habitat correlates each species' physical or biological requirements with the characteristics of the lowland dry ecosystem within which they occur (*e.g.,* elevation, rainfall, species associations, etc.), and also includes areas unoccupied by the species but determined to be essential for the conservation of the species. The proposed critical habitat will enable managers to focus conservation management efforts on common threats and facilitate the restoration of the ecosystem function and species-specific habitat needs for the recovery of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense*. This information represents the best current scientific and commercial information available.

Current Status of *Isodendrion pyrifolium* and *Mezoneuron kavaiense*

The plant, *Bidens micrantha* ssp. *ctenophylla,* is proposed for listing as endangered in this rule. For the status of *B. micrantha* ssp. *ctenophylla* see Description of the 15 Species Proposed for Listing above.

Isodendrion pyrifolium (wahine noho kula), a perennial shrub in the violet family (Violaceae), is known from Niihau, Oahu, Molokai, Lanai, Maui, and Hawaii (Wagner *et al.* 1999k, p. 1,331). *Isodendrion pyrifolium* was thought to be extinct since 1870, but was rediscovered in 1991 at Kealakehe, near Kailua on the island of Hawaii. In 2003, *I. pyrifolium* was only known from a single occurrence of approximately nine individuals at Kealakehe on the island of Hawaii (68 FR 39624, July 2, 2003). Currently, there are no extant occurrences on Oahu, Lanai, Molokai, or Maui. Surveys in 2006 and 2007 have documented the decline of the total number of individuals at Kealakehe (from nine individuals in 2003, to four individuals in 2006, to three individuals in 2007) (David 2007, pers. comm. in USFWS 2008, in litt.). Currently, there are only two wild individuals at Kealakehe, in the lowland dry ecosystem (Wagner 2011b, in litt.). The two wild individuals are found within two small, managed preserves situated in an urban setting. The larger 26-ac (11-ha) preserve is bordered by a high school, residential development, and construction of the Kealakehe portion of Ane Keohokalole Highway. The smaller 4-ac (1-ha) preserve is bordered by the same highway construction and open space. Three individuals are represented in ex situ collections (PEPP 2011, p. 32). Plants are under propagation at the Volcano Rare Plant Facility and at the Future Forests Nursery for seed production and for outplanting (VRPF 2010, in litt.; VRPF 2011, in litt; Wagner 2011b, in litt.). Five *I. pyrifolium* plants have been outplanted at the Kaloko-Honokohau National Historical Park (NHP), and another 20 plants were outplanted in Puu Waawaa and Kaupulehu in 2010 (Wagner 2011c, in litt.). There are plans to outplant an additional 25 plants at both Kealakehe and Kaupulehu (Wagner 2011c, in litt.). Critical habitat for this species is also being proposed on the islands of Oahu (76 FR 46362; August 2, 2011), and Maui and Molokai (77 FR 34464; June 11, 2012). There is no currently designated critical habitat for this plant on Hawaii Island.

Mezoneuron kavaiense (uhiuhi), a medium-sized tree in the pea family (Fabaceae), was known historically from Kauai, Oahu, Lanai, Maui, and Hawaii (Geesink *et al.* 1999, pp. 647–648). At the time of listing in 1986, a single large occurrence of approximately 30 individuals at Puu Waawaa contained the majority of individuals of this species on Hawaii Island (51 FR 24672, July 8, 1986; HBMP 2010m). In 1992, a second occurrence of 21 individuals was discovered at Kealakehe (USFWS 1994, p. 14; HBMP 2010m). In 1993, fire within a kipuka (an area of older land within the younger Kaupulehu lava flow) destroyed 80 percent of the individuals known from Puu Waawaa. Surveys in 2006 reported the number of individuals at Puu Waawaa to be approximately 50 to 100 individuals (HBMP 2010m). In addition, recently new information documented 13 individuals near Waikoloa Village (Faucette 2010, p. 3). Currently, *M. kavaiense* is found in 4 occurrences totaling 90 to 140 individuals in the lowland dry ecosystem of Hawaii Island (HBMP 2010m). Critical habitat is not currently designated for this plant.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining those areas that contain the physical or biological features essential to the conservation of the three species, and for which designation of critical habitat is considered prudent, by identifying the occurrence data for each species and determining the ecosystems upon which they depend. This information was developed by using:

- The known locations of the three species, including site-specific species information from the HBMP database (HBMP 2010b; HBMP 2010m; HBMP 2010n), the TNC database (TNC 2007—*Ecosystem Database of ArcMap Shapefiles,* unpublished), and our own rare plant database;
- Species information from the plant database housed at NTBG;
- Maps of habitat essential to the recovery of Hawaiian plants, as determined by the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC 1998, 32 pp. + appendices);
- Maps of important habitat for the recovery of plants protected under the Act (USFWS 1999, pp. F12);
- The Nature Conservancy's Ecoregional Assessment of the Hawaiian High Islands (2006) and ecosystem maps (TNC 2007—*Ecosystem Database of ArcMap Shapefiles,* unpublished);
- Color mosaic 1:19,000 scale digital aerial photographs for the Hawaiian Islands (March 2006 to January 2009);
- Island-wide Geographic Information System (GIS) coverage (*e.g.,* Gap Analysis Program (GAP) vegetation data of 2005;
- 1:24,000 scale digital raster graphics of U.S. Geological Survey (USGS) topographic quadrangles;
- Geospatial data sets associated with parcel data from Hawaii County (2008);
- Recent biological surveys and reports; and
- Discussions with qualified individuals familiar with these species and ecosystems.

Based upon all of this data, we determined that those portions of the lowland dry ecosystems being proposed for critical habitat designation in this rule are either currently occupied or were occupied at the time of listing by one or more of the 3 species addressed in this rule. These areas contain the physical or biological features essential to the conservation of the species, or to the extent that they are not currently occupied by one or more of the three species, they are essential for the conservation of the species (TNC 2006b, pp. 1–2)).

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. These physical or biological features provide the essential life-history requirements of the species, and include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing (or development) of offspring, germination, or seed dispersal; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

For plant species, ecosystems that provide appropriate seasonal wetland and dry land habitats, host species, pollinators, soil types, and associated plant communities are taken into consideration when determining the physical or biological features essential for a species.

The recovery plans (Recovery Plan for *Caesalpinia kavaiensis* and *Kokia drynarioides,* June 1994; and Recovery Plan for the Big Island Plant Cluster, September 1996) identify several actions needed to recover the endangered *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* including: Expanding existing wild populations and reestablishing wild populations within the historic range. These actions are also needed to recover *Bidens micrantha* ssp. *ctenophylla* because this species, found in the same habitat as the two listed plants, faces the same threats. Furthermore, because of their small numbers or low population sizes, each of the three species requires suitable habitat and space for the expansion of existing populations to achieve a level that could approach recovery. We have determined that to recover these species, it is essential to conserve suitable habitat in both occupied and unoccupied units, which will in turn allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.,* hurricanes, fire, and nonnative species introductions) (Mangel and Tier 1994, p. 612; Pimm *et al.* 1998, p. 777; Stacey and Taper 1992, p. 27). In this regard, the designation of critical habitat limited to the geographic areas occupied by the species at the time of listing would be insufficient to achieve recovery objectives.

We have derived the specific physical and biological features required for each of the two listed plants, *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* from studies of the species' habitat, ecology, and life history. In addition, we have reevaluated the physical and biological features for *I. pyrifolium* based on ecosystem definitions using species information from the 2003 *Final Designation and Nondesignation of Critical Habitat for 46 Plant Species From the Island of Hawaii, HI* (68 FR 39624, July 2, 2003) and new scientific information that has become available since that time. *Bidens micrantha* ssp. *ctenophylla* is found in locations with the same substrate age and soil type as *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* and is known to share the same land cover (vegetation) type as *Mezoneuron kavaiense* throughout over 85 percent of its range (HBMP 2010m). Therefore, we believe that *B. micrantha* ssp. *ctenophylla* shares the same physical or biological features that we have determined for *Isodendrion pyrifolium* and *Mezoneuron kavaiense.*

When designating critical habitat in occupied areas, we focus on the physical or biological features that may be essential to the conservation of the species and which may require special management considerations or protections. In unoccupied habitat, we focus on whether the area is essential to the conservation of the species. The currently proposed physical or biological features for occupied areas, in conjunction with the unoccupied areas needed to expand and reestablish wild populations within their historical range, provide a more accurate picture of the geographic areas needed for the recovery of each species. We believe this information will be helpful to Federal agencies and our other partners, as we collectively work to recover these imperiled species.

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the three species for which we are proposing critical habitat. We identify these features in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider the primary constituent elements (PCEs) to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species. The PCEs identified in this proposed rule take into consideration the ecosystem in which each species occurs and reflects a distribution that we believe is essential to achieving the species' recovery needs within that ecosystem.

In this proposal, PCEs for each of the three species are defined based on those physical or biological features essential to support the successful functioning of the ecosystem upon which each species depends, and which may require special management considerations or protection. As the conservation of each species is dependent upon a functioning ecosystem to provide its fundamental life requirements, such as a certain soil type, minimum level of rainfall, or suitable native host plant, we consider the physical or biological features present in the ecosystem described in this rule to provide the necessary elements for each of the three species in this proposal. The ecosystem's features collectively provide the suite of environmental conditions essential to meeting the requirements of each of the three species, including the appropriate microclimatic conditions for germination and growth of the plants (*e.g.,* light availability, soil nutrients, hydrologic regime, temperature), and in all cases, space within the appropriate habitats for population growth and expansion, to maintain the historical, geographical, and ecological distribution of each species. In the case of *Isodendrion pyrifolium,* due to its recent rediscovery and limited geographic distribution at one known occurrence, the more general description of the physical or biological features that provide for the successful function of the ecosystem that is essential to the conservation of the species represents the best, and in many cases, the only, scientific information available. Accordingly, the physical or biological features of the lowland ecosystem are the physical or biological features essential to the conservation of the three species at issue here.

Table 4 identifies the physical or biological features of a functioning lowland dry ecosystem, which each of the three species identified in this rule requires.

TABLE 4—PRIMARY CONSTITUENT ELEMENTS OF THE LOWLAND DRY ECOSYSTEM

Ecosystem	Elevation	Annual precipitation	Substrate	Potential habitat for one or more of these associated native plant genera		
				Canopy	Subcanopy	Understory
Lowland Dry [2]	< 3,300 ft (<1,000 m)	< 50 in (<130 cm)	Weathered silty loams to stony clay, rocky ledges, little-weathered lava.	*Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum, Sapindus.*	*Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola, Wikstroemia.*	*Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

Table 4 indicates that the specific elements or PCEs in the lowland dry ecosystem include elevations of less than 3,300 ft (1,000 m); annual precipitation of less than 50 in (130 cm); weathered silty loams to stony clay, rocky ledges, and little-weathered lava; and potential habitat for one or more genera of the subcanopy plants *Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola,* and *Wikstroemia,* one or more of the understory plants *Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia,* and *Sicyos,* and one or more of the genera of the canopy species *Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum,* and *Sapindus.*

Criteria Used To Identify Critical Habitat Boundaries

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these three species. We propose to designate critical habitat on lands that contain the physical or biological features essential to conserving multiple species, based on their shared dependence on the functioning ecosystem they have in common. The lowland dry ecosystem that supports the three plant species addressed here does not form a contiguous area, and is divided into seven geographic subunits that we refer to as ''sections.'' Although we do not usually refer to areas of critical habitat as sections, compliance with **Federal Register** publication requirements necessitated the subdivision into smaller subunits to correspond with existing critical habitat units currently published in the Code of Federal Regulations (CFR), as some of the proposed critical habitat for the three plant species overlies critical habitat already designated for other plants on the island of Hawaii. We, thus, refer to ''sections'' here in order to retain the focus on the contiguous ecosystem areas of interest in this proposed rule, while recognizing that multiple critical habitat units may comprise these sections. Further details are provided under the section titled ''Proposed Critical Habitat Designation,'' below.

The proposed critical habitat is a combination of areas currently occupied by these three species, as well as areas that may be currently unoccupied. The best available scientific information suggests that these species either presently occur within, or have occupied, these habitats. A properly functioning ecosystem provides the physical or biological features that support life-history requirements of the species that rely on the ecosystem, and the specific elements or PCEs essential for the conservation of the species that occur there. In addition, due to the small population sizes, few numbers of individuals, and reduced geographic range of each of the three species for which critical habitat is here proposed, we have determined that a designation limited to known present range of each species would be inadequate to achieve the conservation of those species. The areas that may have been unoccupied at the time of listing have been determined to be essential for the conservation and recovery of the species because they provide the habitat necessary for the expansion of existing wild populations and reestablishment of wild populations within the historical range of the species. Designating unoccupied critical habitat for these species would promote conservation actions to restore their historical, geographical, and ecological representation, which is essential for their recovery. Critical habitat boundaries for all species were delineated to clearly depict and promote the recovery and conservation of these species by identifying the functioning ecosystem on which they depend.

Current and historical species location information was used to develop initial critical habitat boundaries (polygons) in the lowland dry ecosystem that would individually and collectively provide for the conservation of the three species addressed in this proposed rule. For these three species, we propose critical habitat only in the geographic area of historical occurrence, which is restricted to the lowland dry ecosystem in the north Kona and south Kohala regions. The initial polygons were superimposed over digital topographic maps of the island of Hawaii and further evaluated. In general, land areas that were identified as highly degraded were removed from the proposed critical habitat units, and natural or manmade features (*e.g.,* ridge lines, valleys, streams, coastlines, roads, obvious land features, etc.) were used to delineate the proposed critical habitat boundaries.

The critical habitat areas described below constitute our best assessment of the physical or biological features essential for the conservation of the three plant species, and the unoccupied areas essential for the species' conservation by providing for the expansion of existing populations. The approximate size of each of the seven plant critical habitat sections and the status of their land ownership, are identified in Table 5A. As noted in Table 5A, all areas proposed for critical habitat designation are found within the lowland dry ecosystem. Table 5B identifies the areas under consideration for exclusion from critical habitat designation under section 4(b)(2) of the Act (see Exclusions, below).

When determining critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack the physical or biological features essential for the conservation of the three plant species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat unless the specific action

would affect the adjacent critical habitat or its primary constituent elements.

TABLE 5A—CRITICAL HABITAT PROPOSED FOR *Bidens micrantha* SSP. *ctenophylla, Mezoneuron kavaiense,* AND *Isodendrion pyrifolium* ON THE ISLAND OF HAWAII

[Totals may not sum due to rounding]

Proposed critical habitat area	Size of section in acres	Size of section in hectares	State	Federal	County	Private	Corresponding critical habitat map in the Code of Federal Regulations (CFR)
Hawaii—Lowland Dry							
—Section 1							
Unit 10	2,914	1,179	2,914				Map 39a.
Unit 31	9,936	4,021	7,101			2,834	Map 104.
—Unit 32	1,779	720	21			1,758	Map 105.
—Unit 33	1,583	640	1,080			502	Map 106.
—Unit 34	961	389	259			702	Map 106.
—Unit 35	1,192	485	606		19	568	Map 106.
—Unit 36	402	163	5	397			Map 106.
Total Lowland Dry.	18,766	7,597	11,986	397	19	6,364	

TABLE 5B—AREAS UNDER CONSIDERATION FOR EXCLUSION UNDER SECTION 4(B)(2) OF THE ACT

[Totals may not sum due to rounding]

Owner	Total area proposed as critical habitat in acres (hectares)	Area considered for exclusion in acres (hectares)
Kamehameha Schools	2,834 (1,147)	2,834 (1,147)
Palamanui Global Holdings LLC	502 (203)	502 (203)
Kaloko Properties Corp.	48 (19)	48 (19)
Lanihau Properties	47 (19)	47 (19)
SCD–TSA Kaloko Makai LLC	558 (226)	558 (226)
TSA Corporation	26 (10)	26 (10)
Department of Hawaiian Home Lands	446 (181)	87 (35)
Total	4,461 (1,805)	4,099 (1,659)

The proposed critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the proposed critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. [FWS–R1–ES–2012–0070], on our Internet site *http://www.fws.gov/pacificislands,* and at the Pacific Islands Fish and Wildlife Office responsible for the designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

Special Management Considerations or Protections

The term critical habitat is defined in section 3(5)(A) of the Act, in part, as geographic areas on which are found these physical or biological features essential to the conservation of the species and ''which may require special management considerations or protection.''

In identifying critical habitat in occupied areas, we determine whether those areas that contain the features essential to the conservation of the species require any special management actions. Although the determination that special management may be required is not a prerequisite to designating critical habitat in unoccupied areas, special management is needed throughout all of the proposed critical habitat units. The following discussion of special management needs is, therefore, applicable to each of the three Hawaii Island species for which we are proposing to designate critical habitat.

For each of the three species currently found in the wild on Hawaii Island, we have determined that the features essential to their conservation are those required for the successful functioning of the lowland dry ecosystem in which they occur (see Table 4 above). Special management considerations or protections are necessary throughout the critical habitat areas proposed here to avoid further degradation or destruction of the habitat that provides those features essential to their conservation. The primary threats to the physical or biological features essential to the conservation of these three species include habitat destruction and modification by development, nonnative ungulates, competition with nonnative species, hurricanes, fire, drought, and climate change. The

reduction of these threats will require the implementation of special management actions within each of the critical habitat areas identified in this proposed rule.

All proposed critical habitat requires special management actions to address the ongoing degradation and loss of habitat caused by agricultural and urban development. Urbanization also increases the likelihood of wildfires ignited by human sources. Without protection and special management, habitat containing the features that are essential for the conservation of these species will continue to be degraded and destroyed.

All proposed critical habitat requires active management to address the ongoing degradation and loss of native habitat caused by nonnative ungulates (goats and cattle). Nonnative ungulates also impact the habitat through predation and trampling. Without this special management, habitat containing the features that are essential for the conservation of these species will continue to be degraded and destroyed.

All proposed critical habitat requires active management to address the ongoing degradation and loss of native habitat caused by nonnative plants. Special management is also required to prevent the introduction and spread of nonnative plant species into native habitats. Particular attention is required in nonnative plant control efforts to avoid creating additional disturbances that may facilitate the further introduction and establishment of invasive plant seeds. Precautions are also required to avoid the inadvertent trampling of listed plant species in the course of management activities.

The active control of nonnative plant species will help to address the threat posed by fire in all six of the proposed critical habitat units. This threat is largely a result of the presence of nonnative plant species such as the grasses *Pennisetum setaceum* and *Melinis minutiflora* that increase the fuel load and quickly regenerate after a fire. These nonnative grass species can outcompete native plants that are not adapted to fire, creating a grass-fire cycle that alters ecosystem functions (D'Antonio and Vitousek 1992, pp. 64–66; Brooks *et al.* 2004, p. 680).

In summary, we find that each of the areas we are proposing as critical habitat contains features essential for the conservation of the species that may require special management considerations or protection to ensure the conservation of the three plant species for which we are proposing critical habitat. These special management considerations and protections are required to preserve and maintain the essential features provided to these species by the lowland dry ecosystem upon which they depend. The specific areas proposed for critical habitat that are outside the geographical area occupied by these species have been determined to be essential for their conservation.

Proposed Critical Habitat Designation

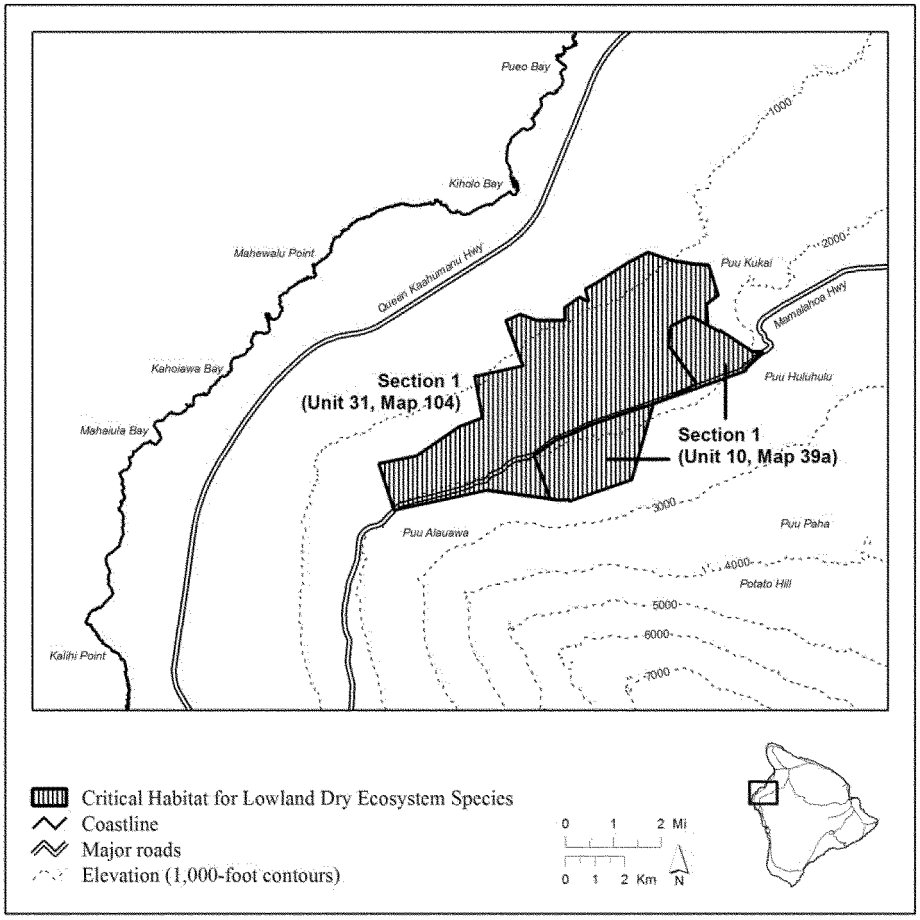
We are proposing 18,766 ac (7,597 ha) as critical habitat in 7 units within the lowland dry ecosystem for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* (See Table 5A above for details). Of these proposed units, 10,304 ac (4,170 ha), or 55 percent, are already designated as critical habitat for other listed species. The proposed critical habitat includes land under State, County of Hawaii, Federal (Kaloko-Honokohau NHP), and private ownership. The critical habitat units we describe below constitute our current best assessment of those areas that meet the definition of critical habitat for the three species of plants.

Because some of the proposed critical habitat for the three plants overlays critical habitat already designated for other plant species on the island of Hawaii, we have incorporated the maps of the areas proposed for critical habitat in this proposed rule into the existing critical habitat unit numbering system established for the plants on the island of Hawaii in the Code of Federal Regulations (50 CFR 17.99(k)). This required further subdividing some of the ecosystem areas that we identified as ''sections'' into units that correspond to both existing and new critical habitat unit numbers and maps numbers as published in the CFR. The maps and area descriptions presented here represent the lowland dry ecosystem areas that we have identified for the three plant species, subdivided into a total of 6 sections. The critical habitat unit numbers and the corresponding map numbers that will appear at 50 CFR 17.99 are additionally provided for ease of reference in the CFR.

Descriptions of Proposed Critical Habitat

Hawaii—Lowland Dry—Section 1 consists of 10,015 ac (4,053 ha) of State land, and 2,834 ac (1,147 ha) of privately owned land for a total of 12,849 ac (5,200 ha), from Puu Waawaa to Kaupulehu on the northwestern slope of Hualalai between the elevations of 760 and 2,600 ft (231 and 793 m) (Figure 2). The section includes 2,914 ac (1,179 ha) of State land within previously designated critical habitat and 9,936 ac (4,021 ha) of newly proposed critical habitat on 7,101 ac (2,874 ha) of State land and 2,834 ac (1,147 ha) of privately owned land. The area that falls within designated critical habitat lies within Hawaii Unit 10 of 50 CFR 17.99(k), Map 39a, and proposed new critical habitat Hawaii Unit 31, Map 104. The area of Section 1 that overlaps previously designated critical habitat includes critical habitat for the following listed plant species: *Bonamia menziesii, Colubrina oppositifolia, Hibiscadelphus hualalaiensis, Neraudia ovata,* and *Nothocestrum breviflorum.* This section is occupied by the plants *Bidens micrantha* spp. *ctenophylla* and *Mezoneuron kavaiense* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4).

This section also contains unoccupied habitat that is essential to the conservation of these two species by providing the PCEs necessary for the expansion of the existing wild populations. Although Hawaii—Lowland Dry—Section 1 is not known to be occupied by *Isodendrion pyrifolium,* we have determined this area to be essential for the conservation and recovery of this lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within its historical range. Due to its small numbers of individuals this species requires suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.



Hawaii—Lowland Dry—Unit 32 consists of 21 ac (8 ha) of State land, and 1,758 ac (712 ha) of privately owned land for a total of 1,779 ac (720 ha), at Waikoloa on the western slope of Mauna Kea between the elevations of 720 and 1,220 ft (220 and 372 m). This unit is not in previously designated critical habitat and comprises proposed critical habitat shown on Map 105 in this proposed rule. This unit is occupied by the plant *Mezoneuron kavaiense* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). Although Hawaii—Lowland Dry—Unit 32 is not currently occupied by *Bidens micrantha* ssp. *ctenophylla* or *Isodendrion pyrifolium,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the physical or biological features necessary for the reestablishment of wild populations within the historical ranges of the species. Due to their small numbers of individuals or low population sizes, these two species require suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

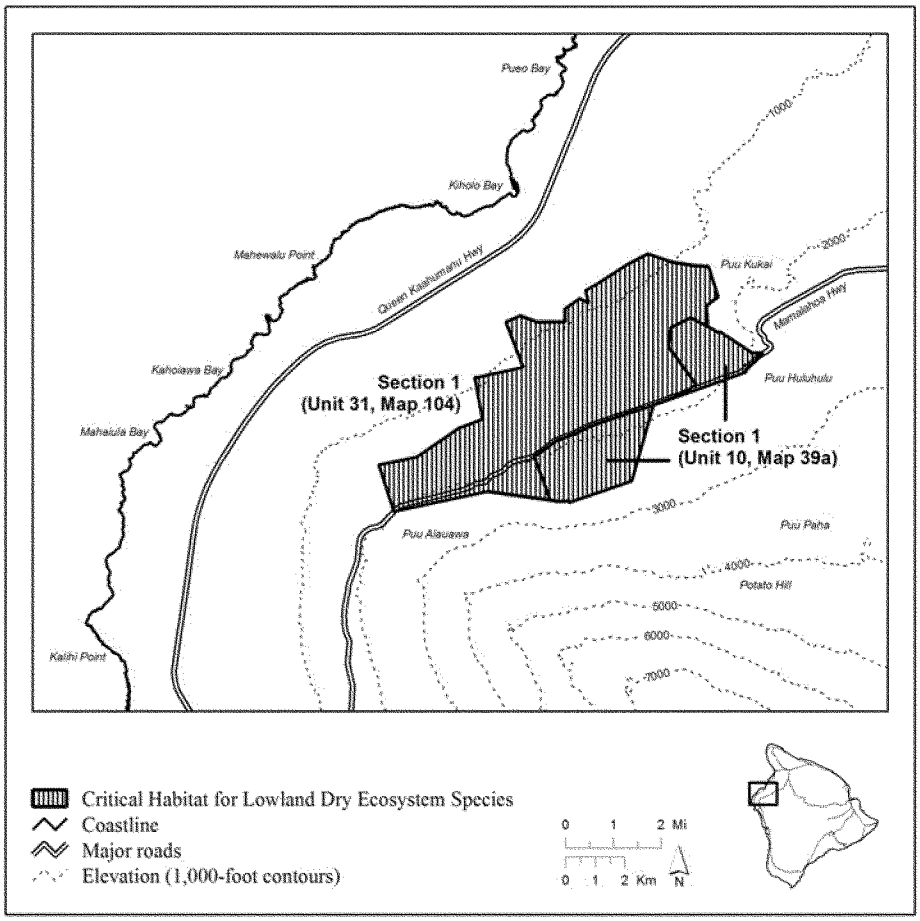


FIGURE 2. Area designated as critical habitat for *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kavaiense* in the Lowland Dry Ecosystem (Section 1). Section 1 consists of multiple critical habitat units; a portion of an existing critical habitat unit on Hawaii Island (Unit 10) and the area proposed as critical habitat on Hawaii Island (Unit 31). Unit and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(k)), are provided for ease of referencing.

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Hawaii—Lowland Dry—Unit 33 consists of 1,080 ac (437 ha) of State land, and 502 ac (203 ha) of privately owned land, from Puukala to Kalaoa on the western slope of Hualalai between the elevations of 360 and 1,080 ft (110 and 329 m). This unit is not in previously designated critical habitat and comprises proposed critical habitat Hawaii—Lowland Dry—Unit 33 of Map 106 in this proposed rule. This unit is occupied by the plant *Mezoneuron kavaiense* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Hawaii—Lowland Dry—Unit 33 is not known to be occupied by *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, these species require suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Hawaii—Lowland Dry—Unit 34 consists of 259 ac (105 ha) of State land, and 702 ac (284 ha) of privately owned land for a total of 961 ac (389 ha), from Kalaoa to Puukala on the western slope of Hualalai between the elevations of 280 and 600 ft (85 and 183 m). This unit is not in previously designated critical habitat and comprises proposed critical habitat Hawaii—Lowland Dry—Unit 34 of Map 106 in this proposed rule. This unit is occupied by the plant *Bidens micrantha* ssp. *ctenophylla,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Hawaii—Lowland Dry—Unit 34 is not known to be occupied by *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* we have determined this area to be essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, these species require suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Hawaii—Lowland Dry—Unit 35 consists of 606 ac (245 ha) of State land, 19 ac (7.8 ha) of County land, and 568 ac (230 ha) of privately owned land for a total of 1,192 ac (485 ha), at Kealakehe on the western slope of Hualalai between the elevations of 80 and 560 ft (24 and 171 m). This unit is not in previously designated critical habitat and comprises proposed critical habitat Hawaii—Lowland Dry—Unit 35 of Map 106 in this proposed rule. This unit is occupied by the plants *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat that is essential to the conservation of these species by providing the PCEs necessary for the expansion of the existing wild populations.

Hawaii—Lowland Dry—Unit 36 consists of 5 ac (2 ha) of State land and 397 ac (161 ha) of Federal land for a total of 402 ac (163 ha), near the coastline at Kaloko and Honokohau on the western slope of Hualalai between the elevations of 20 and 90 ft (6 and 27 m). This unit is not in previously designated critical habitat and comprises proposed critical habitat Hawaii—Lowland Dry—Unit 36 of Map 106 in this proposed rule. This unit is occupied by the plant *Bidens micrantha* ssp. *ctenophylla,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 4). This unit also contains unoccupied habitat for the plant *Isodendrion pyrifolium* that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Hawaii—Lowland Dry—Unit 36 is not known to be occupied by *Isodendrion pyrifolium,* we have determined this area to be essential for the conservation and recovery of this lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within its historical range. Due to their small numbers of individuals or low population sizes, these species require suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act, as amended, requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (See *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical or biological features that relate to the current ability of the area to support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we issue either:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action;
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;
- Are economically and technologically feasible; and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if

those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may adversely affect the species included in this proposed rule or their designated critical habitat require section 7 consultation under the Act. This includes activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*), or a permit from us under section 10 of the Act), or activities involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). These types of activities are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards

Application of the Jeopardy Standard

The jeopardy analysis usually expresses the survival and recovery needs of a listed species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, the jeopardy analysis focuses on the status of a species, the factors responsible for that condition, and what is necessary for the species to survive and recover. An emphasis is also placed on characterizing the condition of the species in the area affected by the proposed Federal action. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the jeopardy determination. The jeopardy analysis also considers any conservation measures that may be proposed by a Federal action agency to minimize or compensate for adverse effects to the species or to promote its recovery.

Application of the Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analysis for Federal actions affecting critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the essential features to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the essential features, or the essential habitat qualities of unoccupied habitat, to an extent that appreciably reduces the conservation value of critical habitat for the three species identified in this proposed rule.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat for the three plant species, and therefore may be affected by this proposed designation, include, but are not limited to:

(1) Activities that may appreciably degrade or destroy the physical or biological features for the species, including, but not limited to, overgrazing, maintaining or increasing feral ungulate levels, clearing or cutting native live trees and shrubs (*e.g.,* woodcutting, bulldozing, construction, road building, mining, herbicide application), and taking actions that pose a risk of fire.

(2) Activities that may alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, wetland, aquatic, or vegetative communities. Such activities include new water diversion or impoundment, excess groundwater pumping, and manipulation of vegetation through activities such as the ones mentioned in (1) above.

(3) Recreational activities that may appreciably degrade vegetation.

(4) Mining sand or other minerals.

(5) Introducing or encouraging the spread of nonnative plant species.

(6) Importing nonnative species for research, agriculture, and aquaculture, and releasing biological control agents.

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyze INRMPs developed by military installations located within the areas that were being considered for critical habitat designation during the development of this proposed rule to determine if these installations may warrant consideration for exemption under section 4(a)(3) of the Act. There are no Department of Defense (DOD) lands within this proposed critical habitat designation. Therefore, no lands have been exempted from this proposed critical habitat designation under section 4(a)(3) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or make revisions to critical habitat on the basis

of the best available scientific data after taking into consideration relevant impacts, including economic and national security impacts, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

When considering the benefits of inclusion of an area in critical habitat, we consider the regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of consultation under section 7(a)(2) of the Act for actions with a Federal nexus; the educational benefits of mapping habitat essential for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. Benefits could include public awareness of the presence of listed species and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection due to the protection from adverse modification or destruction of critical habitat.

When considering the benefits of exclusion, we consider factors such as whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or the implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

The Secretary can consider conservation agreements and other land management plans with Federal, private, State, and tribal entities when making decisions under section 4(b)(2) of the Act. The Secretary may also consider voluntary partnerships and conservation plans, and weigh the implementation and effectiveness of these against that of designation. Consideration of relevant impacts of designation or exclusion under section 4(b)(2) may include, but is not limited to, any of the following factors: (1) Whether the plan provides specific information on how it protects the species and the physical or biological features, and whether the plan is at a geographic scope commensurate with the species; (2) whether the plan is complete and will be effective at conserving and protecting the physical or biological features; (3) whether a reasonable expectation exists that conservation management strategies and actions will be implemented, that those responsible for implementing the plan are capable of achieving the objectives, that an implementation schedule exists, and that adequate funding exists; (4) whether the plan provides assurances that the conservation strategies and measures will be effective (*i.e.,* identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan); (5) whether the plan has a monitoring program or adaptive management to ensure that the conservation measures are effective; (6) the degree to which the record supports a conclusion that a critical habitat designation would impair the benefits of the plan; (7) the extent of public participation; (8) a demonstrated track record of implementation success; (9) the level of public benefits derived from encouraging collaborative efforts and encouraging private and local conservation efforts; and (10) the effect designation would have on partnerships. We will also consider whether these efforts would be affected by critical habitat, and, if so, whether this would outweigh the benefits of critical habitat.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in proposed critical habitat may be appropriate for exclusion from the final designation.

To ensure that our final determination is based on the best available information, we are inviting comments on any foreseeable economic, national security, or other potential impacts resulting from this proposed designation of critical habitat from governmental, business, or private interests and, in particular, or any potential impacts on small businesses.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the potential economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at the Federal eRulemaking Portal: *http://www.regulations.gov,* or by contacting the Pacific Islands Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and as an outcome of our analysis of this information, we may exclude areas from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the DOD where a national security impact might exist. There are no DOD lands within this proposed critical habitat designation, and we are unaware of any potential impacts to national security on any lands within the proposed critical habitat designation. Therefore, we do not propose to exclude any areas from the final designation based on impacts on national security, but will fully consider all comments in this regard in the final critical habitat designation.

Exclusions Based on Other Relevant Factors

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security. We consider a number of factors, including whether the landowners have developed any conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. We also consider any social impacts that might occur because of the designation.

We have identified certain areas that we are considering excluding from the final revised critical habitat designation for the three plant species based on conservation partnerships. However, we solicit comments on the inclusion or exclusion of such particular areas (see ''Public Comments'' section). During the development of the final designation, we will consider economic and other relevant impacts, public comments, and other new information before deciding if inclusion or exclusion of these areas is warranted. As a result, additional areas, in addition to those identified below for potential exclusion in this proposed rule, may be excluded from the final critical habitat designation under section 4(b)(2) of the Act. Alternatively, we may decide not to exclude these lands based on information received

during the public comment period or other new information.

Conservation Partnerships on Non-Federal Lands

Kamehameha Schools

We are considering excluding 2,834 ac (1,147 ha) of habitat associated with Kamehameha Schools lands at Kaupulehu on the western slope of Hualalai between the elevations of 940 and 2,600 ft (2,90 and 7,90 m) (Figure 3).

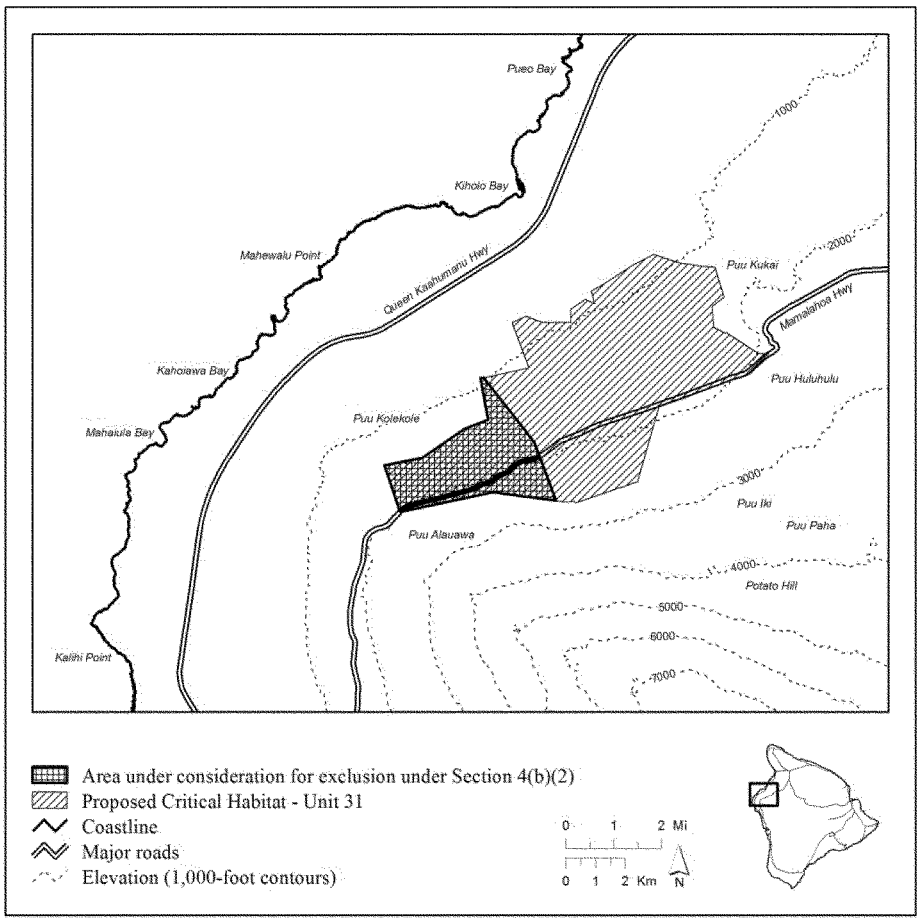

FIGURE 3. Kamehameha Schools lands in Kaupulehu (cross-hatch) under consideration for exclusion from critical habitat under section 4(b)(2) of the Act.

Two plant species included in this rule (*Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense*) occur in this area. The area under consideration falls within proposed critical habitat Hawaii Unit 31, Map 104, and comprises the entire area owned by Kamehameha Schools (2,834 ac (1,147 ha)) within the proposed designation (see Table 5B). This unit is occupied by the plants *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense* and contains the features essential to the lowland dry ecosystem and therefore essential to each species. This area also contains unoccupied habitat that is essential to the conservation of *Isodendrion pyrifolium.*

Kamehameha Schools is conducting voluntary actions to promote the conservation of rare and endangered species and their lowland dry ecosystem habitats on their lands, including the installation of fencing to exclude ungulates, restoring habitat, conducting actions to reduce rodent populations, reestablishing native plant species, and conducting activities reducing the threat of wildfire. We will continue working with Kamehameha Schools during the public comment period, and will make a determination regarding the exclusion from critical habitat designation in the final rule. In addition, we are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat in our final rule for the three plants for which critical habitat is here proposed on Kamehameha Schools land.

Palamanui Global Holdings LLC

The Service is considering excluding 502 ac (203 ha) of habitat associated with the land owned by Palamanui Global Holdings LLC (Palamanui) at Kau, on the western slope of Hualalai between the elevations of 400 and 1,000 ft (120 and 300 m) (Figure 4). The area

under consideration falls within proposed critical habitat Hawaii—Lowland Dry—Unit 33, Map 106, and comprises the entire area owned by Palamanui (502 ac (203 ha)) within the proposed designation (see Table 5B). This unit is occupied by the plant *Mezoneuron kavaiense* and contains the features essential to the lowland dry ecosystem and therefore for this species. This area also contains habitat that is unoccupied but essential to the conservation of the proposed plant, *Bidens micrantha* ssp. *ctenophylla,* and the endangered plant, *Isodendrion pyrifolium.*

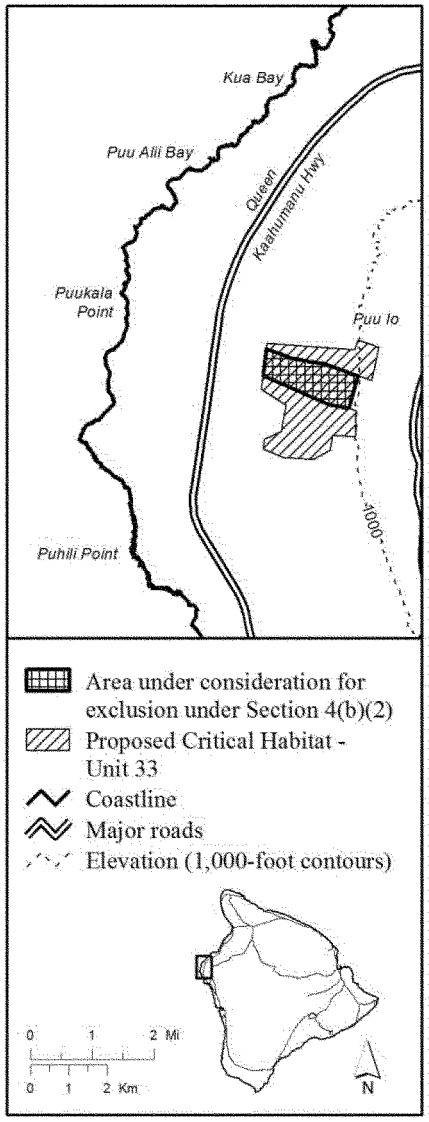

FIGURE 4. Palamanui Global Holdings LLC lands at Kau (cross-hatch) under consideration for exclusion from critical habitat under section 4(b)(2) of the Act.

The Kona Community Development Plan (Hawaii County Ordinance 08–131) identifies the lands owned by Palamanui Global Holdings LLC as located within the Kona Urban Area with a land use designation of Urban Expansion (Wilson Okamoto Corporation 2008, pp. 4–29—4–37). Hiluhilu Development LLC has proposed development of a master planned community (Palamanui Hiluhilu Development Project), which includes single and multi-family residential units, university residential facilities, health facilities, research and development facilities, mixed commercial development, a small hotel, natural and cultural preserves, parks, open space, and parking areas on a 725-ac (293-ha) parcel owned by Palamanui (Group 70 International 2004, p. 3–36; DHHL 2009, p. 10). A portion of the proposed development (502 ac (203 ha)) falls within the area of proposed critical habitat in Hawaii—Lowland Dry—Unit 33.

Palamanui Global Holdings LLC is involved in several voluntary actions that promote the conservation of rare and endangered species on their lands,

including their participation in the North Kona Dry Forest working group, the construction of fencing to exclude ungulates, developing a dry forest preserve management plan, and establishing a fenced research area to measure and monitor forest dynamics within the lowland dry ecosystem. We will continue working with Palamanui Global Holdings LLC during the public comment period for the proposed rule, and will make a determination regarding the exclusion from critical habitat designation in the final rule. In addition, we are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat in our final rule for the three plants for which critical habitat is proposed here on Palamanui Global Holdings LLC land.

Kaloko Makai Development

The Service is considering excluding 630 ac (255 ha) of habitat associated with the Kaloko Makai Development, on the western slope of Hualalai in the land divisions of Kaloko and Ooma between the elevations of 320 and 650 ft (100 and 200 m). There are three landowners with a common interest in the Kaloko Makai Development, Kaloko Properties Corporation (Figure 5–A), SCD–TSA Kaloko Makai LLC (Figure 5–B), and TSA Corporation (Figure 5–C). Two plant species included in this rule *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense* are reported from this area. The area under consideration for exclusion falls within proposed critical habitat Hawaii—Lowland Dry—Unit 34, Map 106, and is comprised of, in their entirety, the areas owned by Kaloko Properties Corporation, SCD–TSA Kaloko Makai LLC, and TSA Corporation within the proposed designation (see Table 5B).

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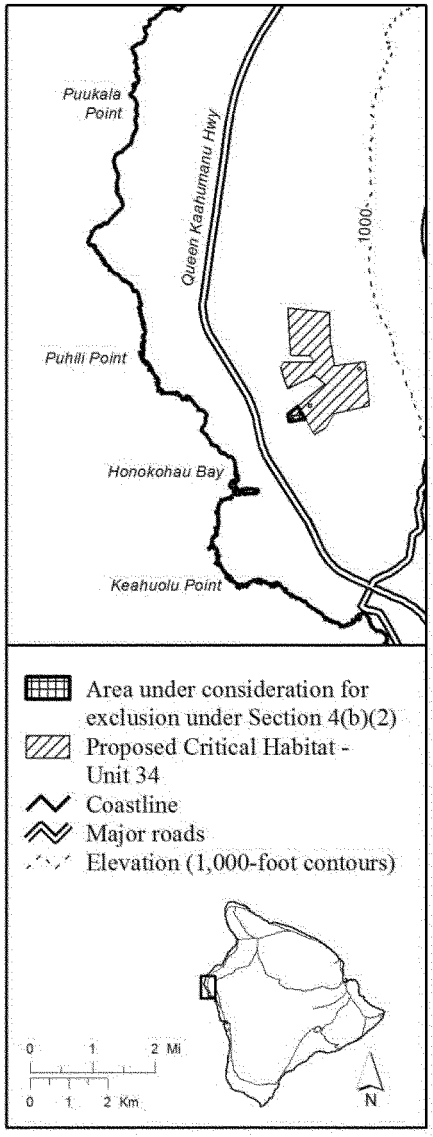

FIGURE 5-A. Kaloko Properties Corporation lands at Kaloko (cross-hatch) under consideration for exclusion from critical habitat under section 4(b)(2) of the Act.

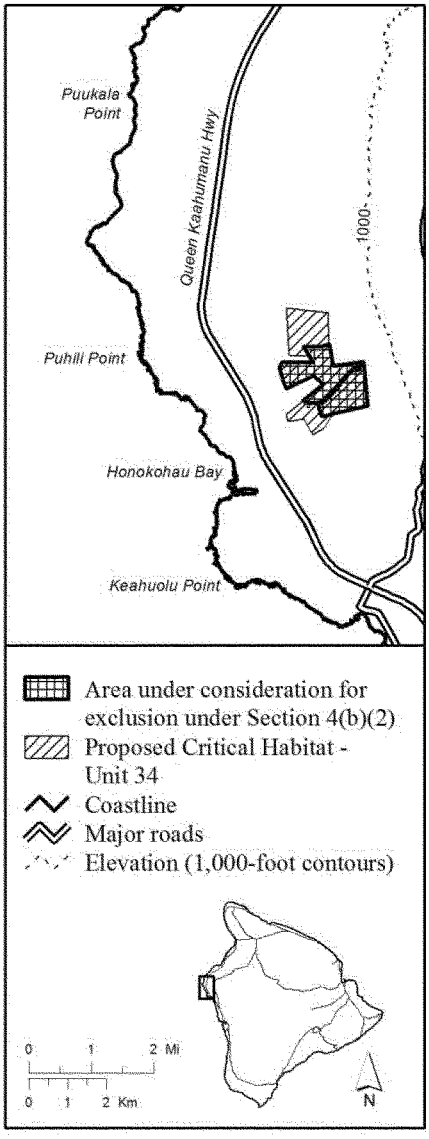

FIGURE 5-B. SCD-TSA Kaloko Makai LLC lands at Kaloko (cross-hatch) under consideration for exclusion from critical habitat under section 4(b)(2) of the Act.

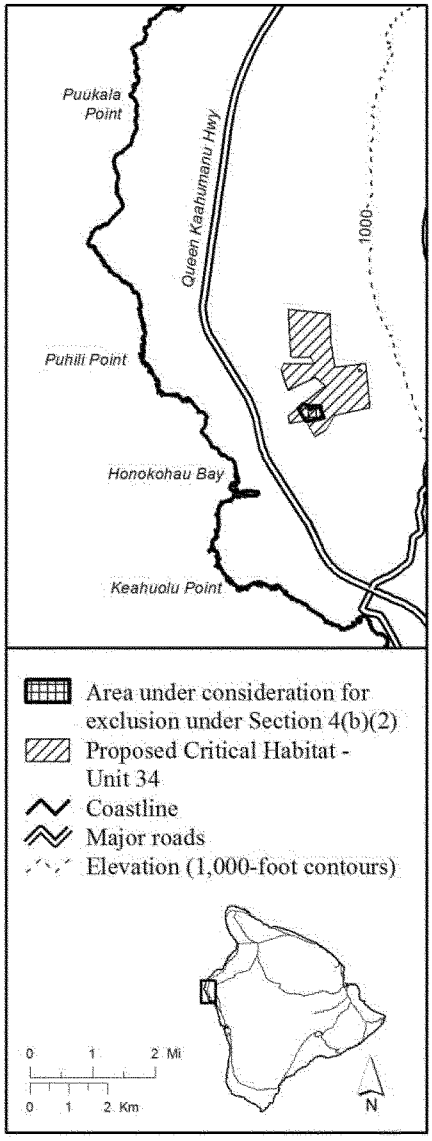

FIGURE 5-C. TSA Corporation lands at Kaloko (cross-hatch) under consideration for exclusion from critical habitat under section 4(b)(2) of the Act.

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This unit is occupied by the plant *Bidens micrantha* ssp. *ctenophylla* and contains the features essential to the lowland dry ecosystem and therefore this species. This area also contains unoccupied habitat that is essential to the conservation of *Isodendrion pyrifolium* and *Mezoneuron kavaiense.*

SCD–TSA Kaloko Makai LLC has proposed the Kaloko Makai Development, a master-planned community on 1,139 ac (461 ha) of which 630 ac (255 ha) are included within the proposed critical habitat Hawaii Unit 34, Map 106. This project is a master-planned, mixed-use community village consisting of 5,000 single and multi-family residential units, up to 1.1 million square (sq) ft (102,193 sq m) of commercial space, light industrial use, three public school sites, a dryland forest preserve, park and open space, a site for development of a regional hospital, and four potable well sites (Hookuleana LLC 2011).

The developers of Kaloko Makai are participating in several important partnerships, conservation agreements, and other actions on their lands to promote the conservation of rare and endangered species, including setting aside a Dryland Forest Preserve area in perpetuity, installing fencing to exclude ungulates, removing ungulates, and eradicating nonnative species. The landowner is also working with the State to develop a multi-species habitat conservation plan that will provide a net conservation benefit to the covered species. We will continue working with Kaloko Makai LLC during the public comment period for the proposed rule, and will make a determination regarding the exclusion from critical

habitat designation in the final rule. In addition, we are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat in the final rule for the three plants for which critical habitat is proposed here on Kaloko Makai Development land.

Lanihau Properties

The Service is considering excluding 47 ac (19 ha) of habitat associated with the lands owned by Lanihau Properties, on the western slope of Hualalai at Kaloko between the elevations of 320 and 440 ft (100 and 135 m) (Figure 6). Two plant species included in this rule, *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense,* are reported from this area. The area under consideration falls within proposed critical habitat Hawaii—Lowland Dry—Unit 34, Map 106, and comprises the entire area (47 ac (19 ha)) owned by Lanihau Properties within the proposed designation. This unit is occupied by the plant *Bidens micrantha* ssp. *ctenophylla* and contains the features essential to the lowland dry ecosystem and therefore essential to this species. This area also contains unoccupied habitat that is essential to the conservation of *Isodendrion pyrifolium* and *Mezoneuron kavaiense*.

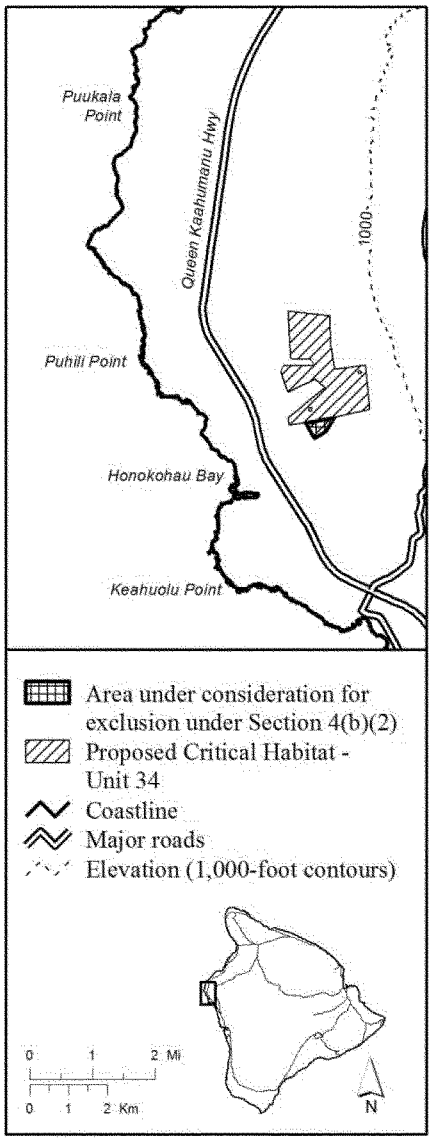


FIGURE 6. Lanihau Properties lands at Kaloko (cross-hatch) under consideration for exclusion from critical habitat under section 4(b)(2) of the Act.

Lanihau Properties is promoting the conservation of rare and endangered species through their land management strategies, conservation agreements, and by setting aside a portion of their land for establishment of the Kaloko Makai Dryland Forest Preserve. We will continue working with Lanihau Properties during the public comment

period, and will make a determination regarding the exclusion from critical habitat designation in the final rule. In addition, we are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat in our final rule for the three plants for which critical habitat is proposed here on Lanihau Properties land.

Department of Hawaiian Homelands

The Service is considering excluding 87 ac (35 ha) of habitat associated with the DHHL's Villages of Laiopua development at Kealakehe on the western slope of Hualalai between the elevations of 400 and 720 ft (122 and 220 m) (Figure 7). Three plant species included in this rule (*Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense*) occur in this area. The area under consideration falls within proposed critical habitat Hawaii—Lowland Dry—Unit 35, Map 106, and comprises a portion of the 355 ac (144 ha) owned by DHHL within the proposed designation (see Table 5B). The area owned by DHHL that is not being considered for exclusion is approximately 268 ac (109 ha) in size. This unit is occupied by the plants *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium* and *Mezoneuron kavaiense,* and contains the features essential to the lowland dry ecosystem and therefore essential to each species.

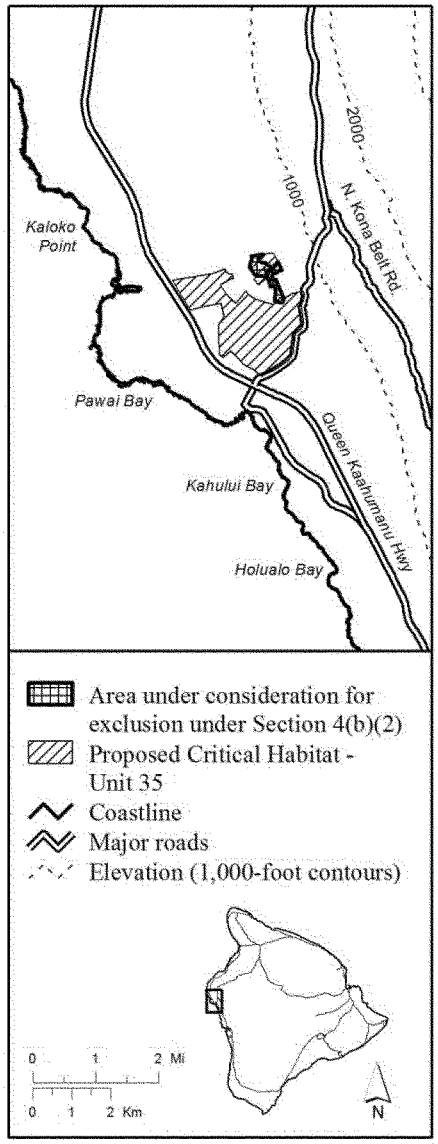


FIGURE 7. Department of Hawaiian Homelands lands at Kealakehe (cross-hatch) under consideration for exclusion from critical habitat under section 4(b)(2) of the Act.

Beginning in 1990, Housing and Community Development Corporation of Hawaii (HCDCH) was the State agency placed in charge of the master-planned community known as ''Villages of Laiopua'' (VOLA). The construction of VOLA would be phased, with increments of the proposed 1,700 homes (of which approximately 60 percent, would be offered as affordable housing) developed as discrete villages as funding allowed. From 1993 to 1999, the Service, DOFAW, and HCDCH worked to develop a mitigation plan for the listed and other rare plant species affected by the proposed development. In 1999, HCDCH produced the ''Mitigation Plan for Endangered Species at Villages of Laiopua, Kealakehe, North Kona, Hawaii'' to address impacts to listed and other plant species affected by the construction and development of VOLA (Belt Collins Hawaii 1999, pp. 1–29). By 2004, most of the lands within the VOLA development were transferred to the DHHL, which, in consultation with the Service, continues to implement these plans for conservation management. DHHL is involved in several actions to promote the conservation of rare and endangered species, including providing funding to establish and maintain preserves for listed plants, installing fencing for ungulate control, removing nonnative plants, and promoting community volunteer programs that support native plant conservation. In total, DHHL has allocated $741,564 toward construction of the preserves, habitat restoration, and education and community outreach activities through 2014.

We will continue working with the DHHL during the public comment period, and will make a determination regarding the exclusion from critical habitat designation in the final rule. In addition, we are requesting comments and information regarding these areas and will determine whether these lands may warrant exclusion from critical habitat in our final rule for the three plants for which critical habitat is proposed here on DHHL lands at Kealakehe.

Lands Previously Excluded Under Section 4(b)(2) of the Act

In 2003, we excluded approximately 329 ac (approximately 133 ha) of land in proposed unit Y2 owned by the Queen Liliuokalani Trust (Trust) because we believed there was a higher likelihood of beneficial conservation activities occurring on those private lands without the designation of critical habitat than there would be with a critical habitat designation (68 FR 39624; July 2, 2003). The exclusion of this area under 4(b)(2) of the Act was based on the Trust's offer to implement voluntary conservation activities and a proposal to: (1) Partner with the Service on a project to conduct research on the propagation of *Isodendrion pyrifolium,* and (2) set aside two areas totaling approximately 53 ac (21 ha) and allow for the outplanting of *I. pyrifolium, Neraudia ovata,* and other endangered species.

In 2004, the Service and the Trust partnered on a project to conduct research on propagation of *Isodendrion pyrifolium* and *Neraudia ovata* to: (1) Secure genetic material in *ex situ* storage, and (2) provide individuals for reintroduction or restoration projects. The Service and the Trust each contributed $10,000 toward the completion of the propagation project. On June 27, 2005, representatives of the Trust, the Service's Partners for Fish and Wildlife Program, Amy Greenwell Botanical Garden, and U.S. Army Garrison Hawaii—Pohakuloa Training Area conducted a site visit to identify appropriate outplanting sites for *I. pyrifolium* and *N. ovata.* Since 2005, the Trust has completed an approximately 28-ac (11-ha) chain-link fence exclosure (to discourage human traffic) in the southeast portion of the property above Queen Kaahumanu Highway adjacent to Palani Road. Within this chain-link exclosure is a smaller exclosure approximately 2 ac (less than 1 ha) in size (to exclude feral pigs) in which common native plants have been outplanted. For the outplanting effort, the Trust partnered with Amy Greenwell Botanical Garden for propagation of native plant material and used the opportunity to educate the community regarding the restoration of the native lowland dry ecosystem. Because the larger, chain-link exclosure contains various archaeological features, it has been proposed as a historical preservation preserve. In addition, the Trust has consulted with numerous cultural descendants of the Keahuolu area who are of native Hawaiian ancestry. Therefore, work in the fenced areas involves consideration of both natural and cultural resources management. According to Trust representatives, all work in the proposed historical preservation preserve has been suspended until the historical preservation plan has been approved by the State Historic Preservation Division. Aside from the contribution to research and propagation of *I. pyrifolium* and protection of the 2-ac (1-ha) area, there have been no additional conservation measures conducted for *I. pyrifolium* and *N. ovata* in the lowland dry ecosystem on the Trust's lands at Keahuolu.

Although the planned management activities described above (*i.e.,* propagation and outplanting, and habitat conservation) are consistent with recovery objectives for the endangered *I. pyrifolium* (USFWS 1996, pp. 1–252), they do not address conservation of the other two plants, the plant *Bidens micrantha* ssp. *ctenophylla* or the endangered plant *Mezoneuron kavaiense* (USFWS 1994, pp. 1–82), for which critical habitat is proposed. Further, since 2005, we are unaware of efforts to outplant propagated individuals of *I. pyrifolium* or any current plans to conserve listed species or their habitats in the lowland dry ecosystem on the lands at Keahuolu owned by the Trust. Therefore, the 329 ac (133 ha) of lands owned by the Trust are not proposed for exclusion in this proposed critical habitat rule.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed listing and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have posted our proposed peer review plan on our Web site at *http://www.fws/pacific/informationquality/index.htm.* We will invite these peer reviewers to comment, during the public comment period (see DATES), on the specific assumptions and conclusions regarding the proposed listing of 15 species and designation of critical habitat for 3 species.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made within 45 days of the publication of this proposal (see **DATES**). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and place of those hearings, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Persons needing reasonable accommodations to attend and

participate in a public hearing should contact the Pacific Islands Fish and Wildlife Office at 808–792–9400 as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposal is available in alternative formats upon request.

Required Determinations

These required determinations relate only to the portion of this rule designating critical habitat. Listing determinations are made solely on the basis of the best scientific and commercial data available. 16 U.S.C. 1533(b)(1)(A).

Regulatory Planning and Review—Executive Order 12866

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The RFA/SBREFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, Hawaii County is not a small governmental jurisdiction because its population was estimated at 185,079 residents in 2010 (*http://hawaii.gov/dbedt/info/census/Census_2010*). Certain State agencies may be affected by the proposed critical habitat designation—such as the Department of Land and Natural Resources and the State Department of Transportation. However, for the purposes of the RFA, State governments are considered independent sovereigns, not small governments.

To determine if a designation of critical habitat could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Under the Act, designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. However, in some States there are State laws that limit activities in designated critical habitat even where there is no Federal nexus. If there is a Federal nexus, Federal agencies would be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude, in a biological opinion, that a proposed action is likely to destroy or adversely modify critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat.

A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on critical habitat, to help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Within the proposed critical habitat designation, the types of actions or authorized activities that we have

identified as potential concerns and that may be subject to consultation under section 7 if there is a Federal nexus are: (1) Activities that might degrade or destroy the primary constituent elements for the species, including, but not limited to: (a) Grazing; (b) maintaining or increasing feral ungulate levels; (c) clearing or cutting native live trees and shrubs; (d) bulldozing; (e) construction; (f) road building; (g) mining; (h) herbicide application; and (i) taking actions that pose a risk of fire; (2) activities that may alter watershed characteristics in ways that would reduce groundwater recharge or alter natural, wetland, aquatic, or vegetative communities (*e.g.,* new water diversion or impoundment activities, groundwater pumping, and manipulation of vegetation through activities such as the ones mentioned above); (3) recreational activities that may degrade vegetation; (4) mining sand or other minerals; (5) introducing or encouraging the spread of nonnative plant species; (6) importing nonnative species for research, agriculture, and aquaculture; and (7) releasing biological control agents.

Three of the proposed critical habitat units (Hawaii Unit 33, Hawaii Unit 34, and Hawaii Unit 35) contain commercial operations or proposed commercial operations. Hawaii Unit 33 totals approximately 1,583 ac (640 ha) and extends from Puukala to Kalaoa on the western slope of Hualalai between the elevations of 360 and 1,080 ft (110 and 329 m). Approximately 1,080 ac (437 ha) of this unit are owned by the State of Hawaii and 502 ac (203 ha) are privately owned by Palamanui Global Holdings LLC. The area owned by Palamanui Global Holdings LLC and proposed within Hawaii Unit 33 comprises a portion of the 725-ac (293-ha) Palamanui Hiluhilu Development project, which includes single and multi-family residential units, university residential facilities, health facilities, research and development facilities, mixed commercial development, a small hotel, natural and cultural preserves, parks, open space, and parking areas (Group 70 International 2004, p. 3–36; DHHL 2009, p. 10). Plans called for the Palamanui Hiluhilu Development project to be developed over a 10-year period beginning in 2004, in a sequence of phases starting with infrastructure and continuing with residential, multi-family, and commercial improvements. However, to date, only construction of certain infrastructure improvements have been completed, and the sale of residential lots is not anticipated until 2013, at the earliest (Harris 2011, pers. comm.). A draft management plan for the biological resources within the Palamanui Hiluhilu Development project area includes the creation of a lowland dry forest preserve and other protective measures to benefit three endangered plants, *Mezoneuron kavaiense, Nothocestrum breviflorum,* and *Pleomele hawaiiensis,* and their habitats (see Palamanui Global Holdings LLC above). Also within proposed critical habitat Hawaii Unit 33 and to the south of the parcel owned by Palamanui Global Holdings LLC, is a 500-ac (202-ha) parcel owned by the State of Hawaii, a portion of which will be developed for the University of Hawaii Center West Hawaii campus (UHCWH) (Wil Chee—Planning & Environmental, Inc. 2007, p. 1). Development of UHCWH buildings within a 78-acre portion of the State owned parcel could begin as early as May 2012 (Jensen 2011, in litt.). At this time we are unaware of ongoing actions or authorized activities with a Federal nexus that may be subject to consultations under section 7 of the Act on the 502 ac (203 ha) of private land owned by Palamanui Global Holdings LLC. Palamanui Global Holdings LLC has demonstrated a willingness to manage these lands in a manner compatible with the conservation of listed and nonlisted species, therefore in this proposed rule we are considering excluding these 502 ac (203 ha) of land owned by Palamanui Global Holdings LLC within proposed Hawaii Unit 33. If these lands are excluded from critical habitat under section 4(b)(2) of the Act in our final rule because the benefits of exclusion outweigh the benefits of critical habitat designation, consultation with us under section 7 of the Act on activities funded, permitted, or carried out by Federal agencies will not be triggered.

Proposed Hawaii Unit 34 totals 961 ac (389 ha) and extends from Kaloko to Ooma on the western slope of Hualalai between the elevations of 280 and 600 ft (85 and 183 m). There are 259 ac (105 ha) of State land, and 702 ac (284 ha) of privately owned land in this proposed unit. The Kaloko Makai Development is proposed on private land within this unit. Several landowners with a common interest in the proposed Kaloko Makai Development include Kaloko Properties Corporation, SCD–TSA Kaloko Makai LLC, and TSA Corporation. A description of the proposed Kaloko Makai Development is given above (see Kaloko Makai Development). SCD–TSA Kaloko Makai LLC is working with the State's DOFAW to develop a multi-species HCP, to minimize and mitigate the impacts of the proposed development on the plant, *Bidens micrantha* ssp. *ctenophylla,* and four endangered plants, *Mezoneuron kavaiense, Neraudia ovata, Nothocestrum breviflorum,* and *Pleomele hawaiiensis* (Hookuleana LLC 2011). In addition, Lanihau Properties owns private land immediately adjacent to the Kaloko Makai Development and is involved in a joint conservation agreement with the Service, the FHWA, DOFAW, the County of Hawaii, and the owners of the Kaloko Makai Development. In 2010, the Service concluded an informal consultation under section 7 of the Act with the FHWA to address impacts to the same four endangered plants and one species proposed for listing in this rule (see above) associated with the proposed construction of Ane Keohokalole Highway from Hina Lani Street to Palani Road. The proposed highway segments covered in the consultation fall within Hawaii Unit 34 in the north and Hawaii Unit 35 in the south. The Service, SCD–TSA Kaloko Makai LLC, FWHA, the County of Hawaii, and Lanihau Properties negotiated several measures to achieve conservation for the four endangered and one plant species proposed for listing in this rule (see above) impacted by highway construction and related development activities. At this time we are unaware of any other ongoing actions or authorized activities with a Federal nexus that may be subject to consultation under section 7 of the Act on the 630 ac (255 ha) of private land owned by the three landowners with a common interest in the Kaloko Makai Development or the 47 ac (19 ha) owned by Lanihau Partners. These landowners have demonstrated a willingness to manage these lands in a manner compatible with the conservation of listed and nonlisted species. Therefore, in this proposed rule we are considering excluding these 676 ac (274 ha) of privately owned land within proposed critical habitat Hawaii Unit 34. If these lands are excluded from critical habitat under section 4(b)(2) of the Act in our final rule because the benefits of exclusion outweigh the benefits of critical habitat designation, consultation with us under section 7 of the Act on activities funded, permitted, or carried out by Federal agencies would not be triggered.

Forest City Hawaii Kona proposes to develop a master-planned community consisting of approximately 270 ac (109 ha) of privately owned lands in proposed critical habitat Hawaii Unit 35

for the HFDC. The development will include 1,020 to 2,330 single and multi-family residences (including the proposed Keahuolu Affordable Housing Project), commercial and retail space, a site reserved for a school, parks, an archaeological preserve, and open space. The State environmental review process has been completed and the developer is targeting early 2012, for receiving the grading and construction permits for Phase 1 of development (Fujimoto 2011a, in litt.; Fujimoto 2011b, in litt.). At this time we are unaware of any ongoing actions or authorized activities with a Federal nexus that may be subject to consultation under section 7 of the Act on the 270 ac (109 ha) of land owned by Forest City Hawaii Kona.

None of the other three proposed critical habitat units contain any significant residential, commercial, industrial, or golf-course projects; crop farming; or intensive livestock operations. Few projects are planned for locations in these other proposed critical habitat units. This situation reflects the fact that existing land-use controls severely limit development and most other economic activities in the rugged lava terrain of the north Kona region of Hawaii Island.

Existing and planned projects, land uses, and activities that could affect the proposed critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Further, although some existing and continuing activities involve the operation and maintenance of existing manmade features and structures in certain areas, these areas do not contain the physical or biological features for the species, and would not be impacted by the designation. Finally, for the anticipated projects and activities that will have Federal involvement, many are conservation efforts that would not negatively impact critical habitat, so they will not be subjected to a protracted informal section 7 consultation. We also anticipate that a developer or other project proponent could modify a project or take measures to conserve critical habitat, if designated.

In addition, Federal agencies may also need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat. In 1984, we designated critical habitat for the endangered plant, *Kokia drynarioides* (49 FR 47397; December 4, 1984), and between 2003 and 2008, we designated critical habitat for 41 endangered plants on Hawaii Island (68 FR 39624; July 2, 2003); for the Blackburn's sphinx moth on Molokai, Maui, and Kahoolawe, and the island of Hawaii (68 FR 34710; June 10, 2003); and for 12 picture-wing flies on Kauai, Oahu, Molokai, Maui, and Hawaii Island (73 FR 73794; December 4, 2008). We discuss our formal and informal consultations conducted prior to 2003 on Hawaii Island in our final rules to designate critical habitat on this island (68 FR 34710, June 10, 2003; 68 FR 39624, July 2, 2003).

Since the 2003 critical habitat designations on Hawaii Island, we have conducted 25 formal consultations and 260 informal consultations on Hawaii Island, in addition to consultations on Federal grants to State wildlife programs that do not affect small entities. Of these 285 formal and informal consultations, 18 formal consultations and 60 informal consultations were primarily consultations regarding Federal permits to Service employees to implement conservation actions for listed species. The remainder, 7 formal consultations and 225 informal consultations, involved (in order of frequency) the Department of Agriculture (USDA-Natural Resources Conservation Service (NRCS), USDA-Pesticide Branch, and USDA-Animal and Plant Health Inspection Service (APHIS)), Federal Communications Commission (FCC), National Park Service (NPS), Federal Highway Administration (FHWA), Department of Housing and Urban Development (HUD), Department of Transportation (DOT), U.S. Army, Environmental Protection Agency (EPA), Hawaii Army National Guard, National Oceanic Atmospheric Administration (NOAA), U.S. Geological Survey-Biological Resource Division (USGS–BRD), Federal Emergency Management Agency (FEMA), U.S. Coast Guard, and the U.S. Army Corps of Engineers.

Three of the seven formal consultations concerned designated critical habitat, and we concurred with each agency's determination that the project as proposed, was not likely to destroy or adversely modify critical habitat.

One of the formal consultations was conducted on behalf of the U.S. Army Garrison regarding routine military training at the Pohakuloa Training Area (PTA). The U.S. Army proposed helicopter pinnacle landings in palila (*Loxioides bailleui*) critical habitat (42 FR 40685; August 11, 1977). The Service determined the pinnacle landings on Puu Omaokaoli at PTA were not likely to adversely modify palila critical habitat. This action was not conducted in proposed critical habitat.

The second formal consultation was conducted on behalf of the FHWA regarding the Saddle Road Realignment and Improvement Project. The FHWA proposed road construction activities in critical habitat for the endangered plants *Clermontia peleana* and *Cyanea platyphylla.* Because the proposed project included beneficial actions for these species in other areas to offset any impacts to habitat from road construction actions, the Service determined that this action was not likely to adversely modify critical habitat. This action was not conducted in proposed critical habitat.

The third formal consultation was conducted on behalf of NOAA regarding Pelekane Bay Watershed restoration. The project area overlapped with 243 ac (98 ha) of unoccupied critical habitat for an endangered plant *Achyranthes mutica.* The NOAA proposed to build an ungulate exclosure fence around the 16,000-ac (6,500-ha) project area, remove all the ungulates within the fenced area, and outplant native plants. Because these actions would greatly enhance the suitability of the site to support *Achyranthes mutica* in the future, and likely result in an overall benefit to the critical habitat by ameliorating several threats, the Service determined that this project was not likely to adversely modify *Achyranthes mutica* critical habitat.

The majority of the 225 informal consultations that did not involve Service actions were related to proposed project effects on seabird (*e.g.,* Newell's shearwater (*Puffinus auricularis newelli*) and Hawaiian petrel (*Pterodroma phaeopygia*)) flyways, the nene or Hawaiian goose (*Branta sandvicensis*), the opeapea or Hawaiian hoary bat (*Lasiurus cinereus semotus*), the io or Hawaiian hawk (*Buteo solitarius*), and other listed species and their associated habitats. About one-third of the informal consultations were conducted with the USDA for proposed funding for habitat restoration projects under NRCS programs such as the Wildlife Habitat Incentives Program and Environmental Quality Incentives Program. A small number of the informal consultations involved the FCC and the construction of cellular telecommunication sites.

Thirteen of the 260 informal consultations concerned designated critical habitat, and in all cases we concurred with each agency's determination that the project, as proposed, had no effect or was not likely to adversely modify critical habitat. These projects were divided between conservation actions that

would benefit listed species, construction, and agricultural operations. For the 247 informal consultations that did not concern designated critical habitat, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species.

In this rule, we are proposing to designate critical habitat on a total 18,766 ac (7,597 ha) of land. Fifty-five percent (10,304 ac (4,170 ha)) of this proposed critical habitat designation overlaps with already designated critical habitat for one or more species, and 45 percent (8,464 ac (3,426 ha)) of the proposed designation is on land newly proposed as critical habitat. Some of the Federal actions that were subject to previous section 7 consultation are on the lands we are proposing as critical habitat in this rule. Therefore, there may be a requirement to reinitiate consultation for some ongoing Federal projects.

In the 2003 and 2008 economic analyses of the designation of critical habitat for 41 species of plants on the island of Hawaii and Blackburn's sphinx moth, we evaluated the potential economic effects on small business entities resulting from the protection of these species and their habitats related to the proposed designation of critical habitat and determined that it would not have a significant economic impact on a substantial number of small entities. The overlap between the critical habitat designations for the 41 plant species and the Blackburn's sphinx moth, and this proposed critical habitat designation is further evidence that this proposal is not likely to have a significant economic impact on a substantial number of small entities.

Based on our evaluation above, we have determined that the proposed designation of critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* will not have a significant impact on a substantial number of small entities, for the reasons described above. As a result, an initial Regulatory Flexibility Analysis is not required. However, we will reevaluate the potential impacts to small entities in the economic analysis we develop for this proposed designation.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments. The lands we are proposing for critical habitat designation are owned by the County of Hawaii, the State of Hawaii, private citizens, and the Federal Government. None of these entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for each of the three species in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for each of these species does not pose significant takings implications for lands within or affected by the proposed designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Hawaii. The critical habitat designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species would be more clearly defined, and the essential features themselves are specifically identified. While making this definition and identification does alter where and what federally sponsored activities may occur, it may assist local governments in long–range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for

an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of each of the species being considered in this proposed rule.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* is not a significant regulatory action under E.O. 12866. There are no energy facilities within the footprint of the proposed critical habitat boundaries. Accordingly, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. Any comments we receive addressing energy supply will be fully considered and addressed in our final determination.

References Cited

A complete list of references cited in this rule 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,** above).

Authors

The primary authors of this document are the staff members of the Pacific Islands Fish and Wildlife Office.

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

a. By adding an entry for ''Fly, Hawaiian picture-wing'' (*Drosophila digressa*), in alphabetical order under INSECTS, to read as set forth below; and

b. By adding an entry for ''Shrimp, anchialine pool'' (*Vetericaris chaceorum*), in alphabetical order under CRUSTACEANS, to read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Fly, Hawaiian picture-wing.	*Drosophila digressa*	U.S.A. (HI)	NA	E		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
CRUSTACEANS							
*	*	*	*	*	*	*	*
Shrimp, anchialine pool	*Vetericaris chaceorum*	U.S.A. (HI)	NA	E		NA	NA
*	*	*	*	*	*	*	*

3. Amend § 17.12(h), the List of Endangered and Threatened Plants, as follows:

a. By removing the entry for *Caesalpinia kavaiensis* under FLOWERING PLANTS,

b. By revising the entry for *Isodendrion pyrifolium* under FLOWERING PLANTS to read as set forth below;

c. By adding entries for *Bidens hillebrandiana* ssp. *hillebrandiana, Bidens micrantha* ssp. *ctenophylla, Cyanea marksii, Cyanea tritomantha, Cyrtandra nanawaleensis, Cyrtandra wagneri, Mezoneuron kavaiense, Phyllostegia floribunda, Pittosporum hawaiiense, Platydesma remyi, Pritchardia lanigera, Schiedea diffusa* ssp. *macraei, Schiedea hawaiiensis,* and *Stenogyne cranwelliae* in alphabetical order under FLOWERING PLANTS, to read as set forth below.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	**Common name**						
FLOWERING PLANTS							
* * * * * * *							
Bidens hillebrandiana ssp. *hillebrandiana*	Kookoolau	U.S.A. (HI)	Asteraceae	E		NA	NA
Bidens micrantha ssp. *ctenophylla*	Kookoolau	U.S.A. (HI)	Asteraceae	E		17.99(k)	NA
* * * * * * *							
Cyanea marksii	Haha	U.S.A. (HI)	Campanulaceae	E		NA	NA
* * * * * * *							
Cyanea tritomantha	ahu	U.S.A. (HI)	Campanulaceae	E		NA	NA
* * * * * * *							

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	**Common name**						
Cyrtandra nanawaleensis	Haiwale	U.S.A. (HI)	Gesneriaceae	E		NA	NA
* * * * * * *							
Cyrtandra wagneri	Haiwale	U.S.A. (HI)	Gesneriaceae	E		NA	NA
* * * * * * *							
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.99(c), (e)(1), (i), and (k)	NA
* * * * * * *							
Mezoneuron kavaiense	Uhiuhi	U.S.A. (HI)	Fabaceae	E	238	17.99(k)	NA
* * * * * * *							
Phyllostegia floribunda	None	U.S.A. (HI)	Lamiaceae	E		NA	NA
* * * * * * *							

Pittosporum hawaiiense	Hoawa	U.S.A. (HI)	Pittosporaceae	E	NA	NA
* * * * * * *						
Platydesma remyi	None	U.S.A. (HI)	Rutaceae	E	NA	NA
* * * * * * *						
Pritchardia lanigera	Loulu	U.S.A. (HI)	Arecaceae	E	NA	NA
* * * * * * *						
Schiedea diffusa ssp. *macraei*	None	U.S.A. (HI)	Caryophyllaceae	E	NA	NA
* * * * * * *						
Schiedea hawaiiense	None	U.S.A. (HI)	Caryophyllaceae	E	NA	NA
* * * * * * *						
Stenogyne cranwelliae	None	U.S.A. (HI)	Lamiaceae	E	NA	NA
* * * * * * *						

* * * * *

4. Amend § 17.99 as follows:

a. By revising the section heading to read as set forth below;

b. By revising the introductory text of paragraph (k) to read as set forth below;

c. By revising the index map at paragraph (k)(1) as set forth below;

d. By redesignating paragraphs (k)(40) through (k)(52) as paragraphs (k)(41) through (k)(53);

e. By adding new paragraph (k)(40) to read as set forth below;

f. By redesignating newly designated paragraphs (k)(46) through (k)(53) as paragraphs (k)(48) through (k)(55);

g. By adding new paragraphs (k)(46) and (k)(47) to read as set forth below;

h. By removing the map in paragraph (k)(97)(ii), and adding in its place the map set forth below;

i. By removing the map in paragraph (k)(100)(ii), and adding in its place the map set forth below;

j. By removing the map in paragraph (k)(101)(ii), and adding in its place the map set forth below;

k. By removing the map in paragraph (k)(102)(ii), and adding in its place the map set forth below;

l. By redesignating paragraphs (k)(104) and (k)(105) as paragraphs (k)(121) and (k)(122);

m. By adding new paragraphs (k)(104), (k)(105), (k)(106), (k)(107), (k)(108), (k)(109), (k)(110), (k)(111), (k)(112), (k)(113), (k)(114), (k)(115), (k)(116), (k)(117), (k)(118), (k)(119), and (k)(120), to read as set forth below;

n. By revising newly designated paragraph (k)(121) to read as set forth below;

o. By removing the entry ''Family Violaceae*: Isodendrion pyrifolium* (wahine noho kula)'' from paragraph (l)(1); and

p. By adding entries for ''Family Asteraceae: *Bidens micrantha* ssp. *ctenophylla*'', ''Family Fabaceae: *Mezoneuron kavaiense*'', and ''Family Violaceae: *Isodendrion pyrifolium''* in alphabetical order by family name to paragraph (l)(1) to read as set forth below:

§ 17.99 Critical habitat; plants on the Hawaiian Islands, HI.

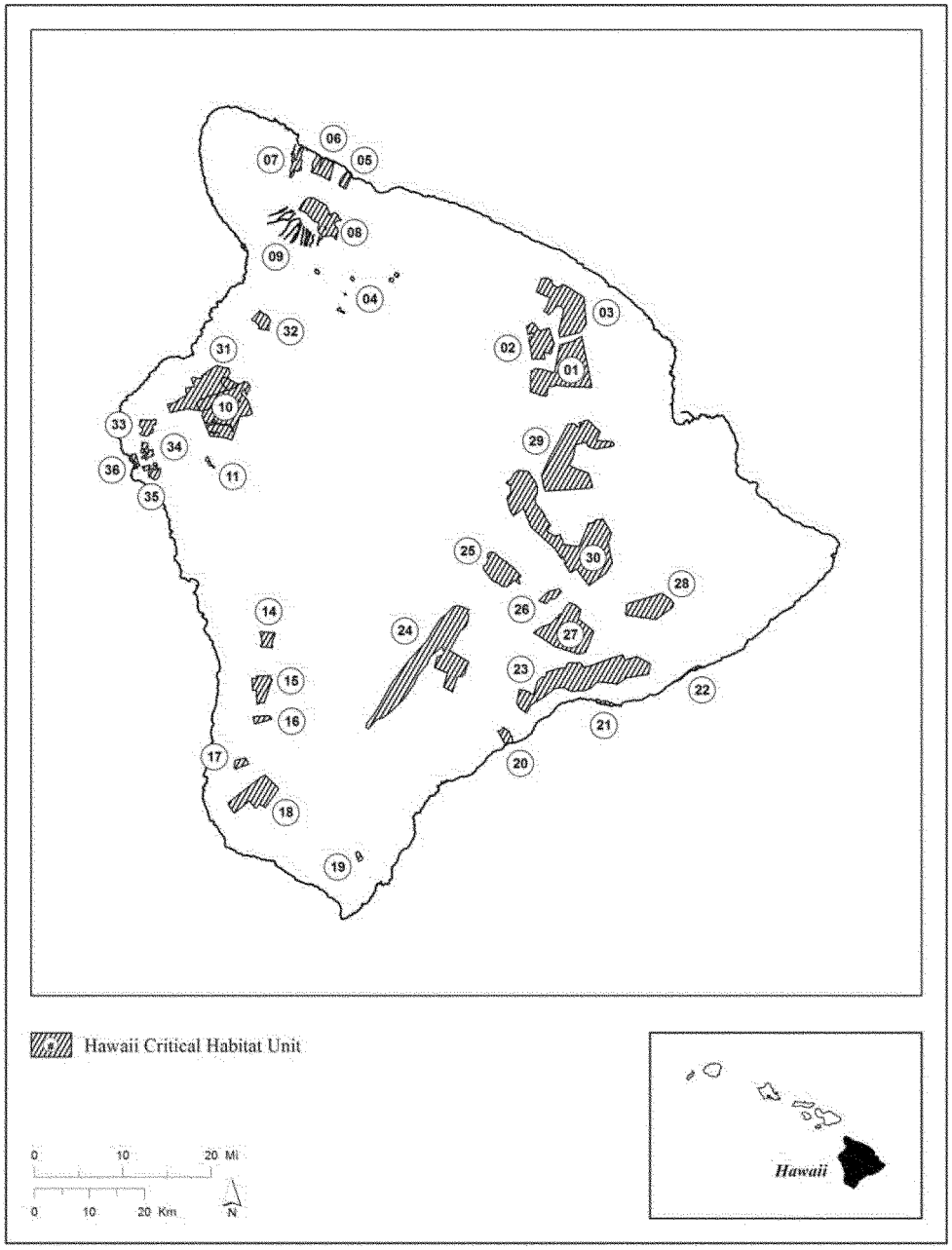
* * * * *

(k) *Maps and critical habitat unit descriptions for the island of Hawaii, HI.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the critical habitat units designated on the island of Hawaii. Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, are not included in the critical habitat designation. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(1) **NOTE:** Map 1, Index map, follows:

Map 1

Hawaii Critical Habitat–Island Index Map



* * * * *

(40) Hawaii 10—*Bidens micrantha* ssp. *ctenophylla*–a (1,179 ha; 2,914 ac)

(i) [Reserved for textual description of Hawaii 10—*Bidens micrantha* ssp. *ctenophylla*–a.]. This unit is also critical habitat for Hawaii 10—*Isodendrion pyrifolium*–a and Hawaii 10—*Mezoneuron kavaiense*–a (see paragraphs (k)(46) and (k)(47), respectively, of this section).

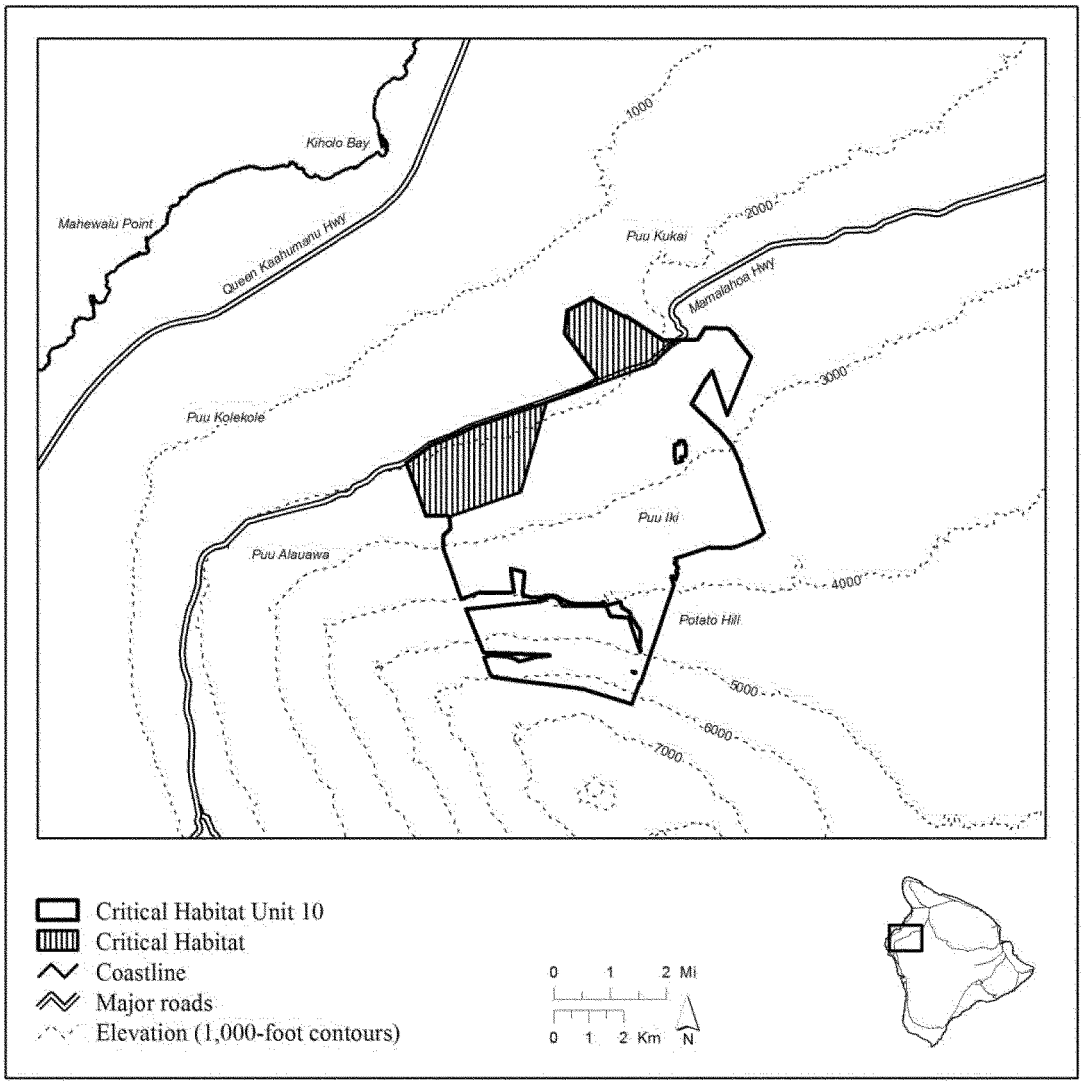
(ii) **NOTE:** Map 39a follows:

MAP 39a

Hawaii 10–*Bidens micrantha* ssp. *ctenophylla*–a, Hawaii 10– *Isodendrion pyrifolium* –a,

Hawaii 10–*Mezoneuron kavaiense*–a

Lowland Dry



* * * * *

(46) Hawaii 10—*Isodendrion pyrifolium*–a (1,179 ha; 2,914 ac)

(i) See paragraph (k)(40)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(40)(ii) of this section for the map of this unit.

(47) Hawaii 10—*Mezoneuron kavaiense*–a (1,179 ha; 2,914 ac)

(i) See paragraph (k)(40)(i) of this section for the textual description of this unit.

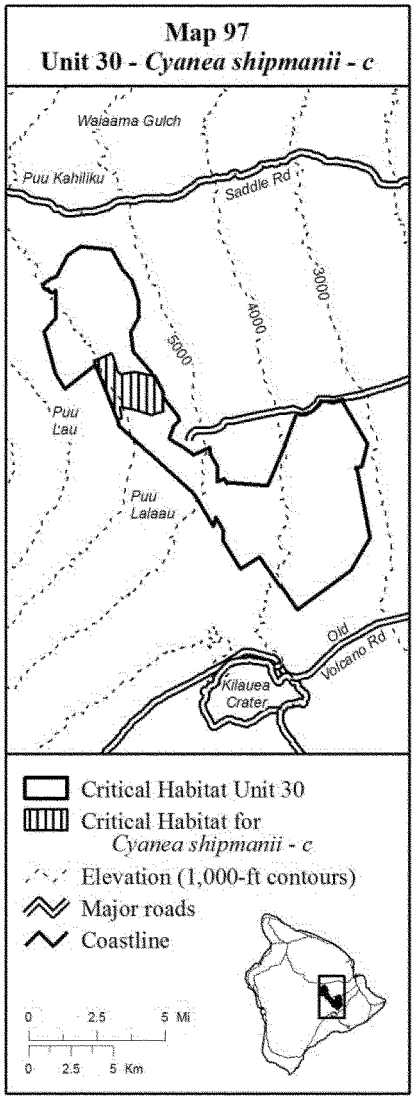
(ii) See paragraph (k)(40)(ii) of this section for the map of this unit.

* * * * *

(97) * * *

(i) * * *

(ii) **NOTE:** Map 97 follows:

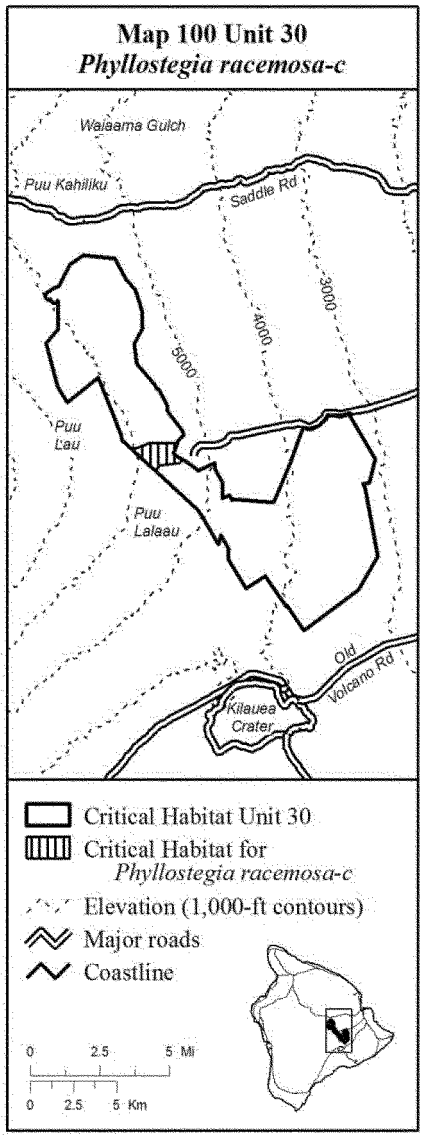


* * * * *

(100) * * *

(i) * * *

(ii) **NOTE:** Map 100 follows:

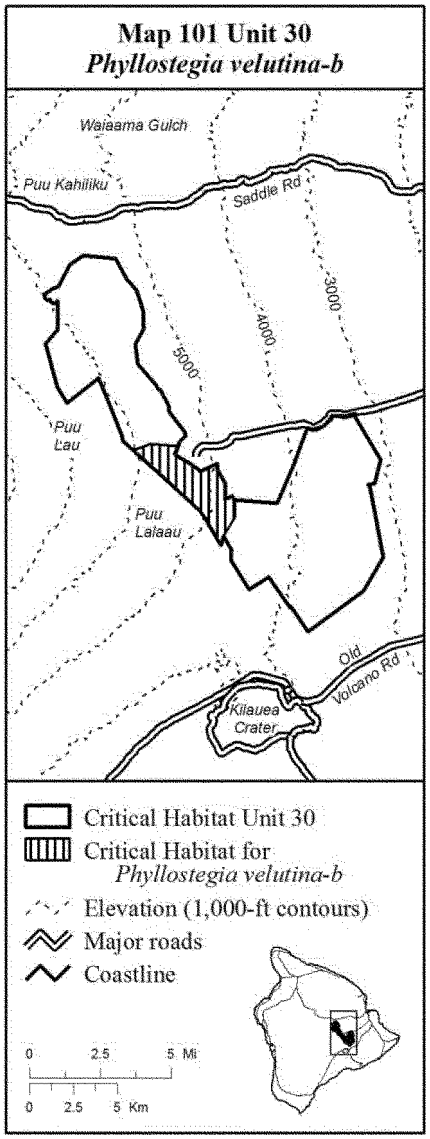


* * * * *

(101) * * *

(i) * * *

(ii) **NOTE:** Map 101 follows:

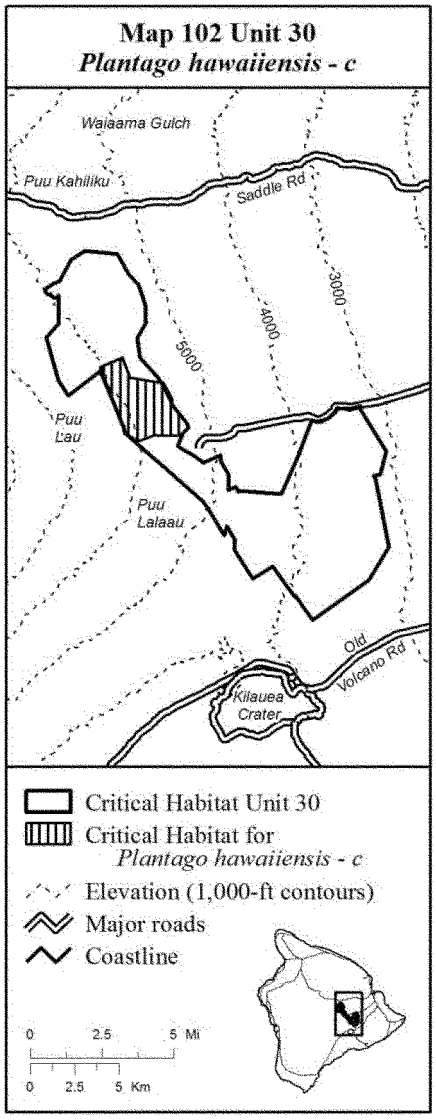


* * * * *

(102) * * *

(i) * * *

(ii) **NOTE:** Map 102 follows:



* * * * *

(104) Hawaii 31–*Bidens micrantha* ssp. *ctenophylla*–b (9,936 ac; 4,021 ha)

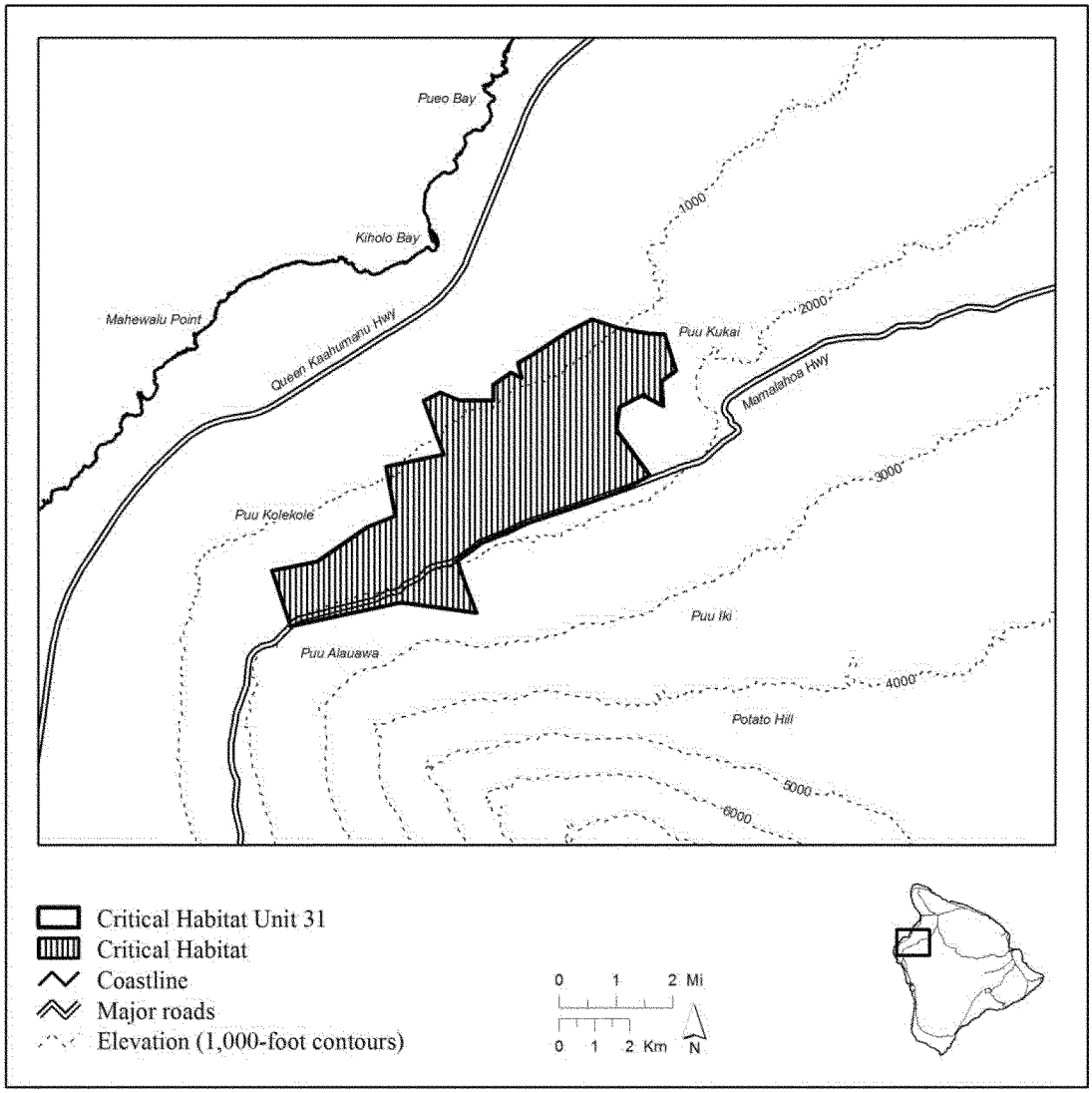
(i) [Reserved for textual description of Hawaii 31–*Bidens micrantha* ssp. *ctenophylla*–b.] This unit is also critical habitat for Hawaii 31–*Isodendrion pyrifolium*–b and Hawaii 31–*Mezoneuron kavaiense*– b (see paragraphs (k)(105) and (k)(106), respectively, of this section).

(ii) **NOTE:** Map 104 follows:

Map 104

Hawaii 31–*Bidens micrantha* ssp. *ctenophylla*–b, Hawaii 31– *Isodendrion pyrifolium*–b, Hawaii 31–*Mezoneuron kavaiense*–b

Lowland Dry



(105) Hawaii 31–*Isodendrion pyrifolium*–b (9,936 ac; 4,021 ha)

(i) See paragraph (k)(104)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(104)(ii) of this section for the map of this unit.

(106) Hawaii 31–*Mezoneuron kavaiense*–b (9,936 ac; 4,021 ha)

(i) See paragraph (k)(104)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(104)(ii) of this section for the map of this unit.

(107) Hawaii 32–*Bidens micrantha* ssp. *ctenophylla*–c (1,779 ac; 720 ha)

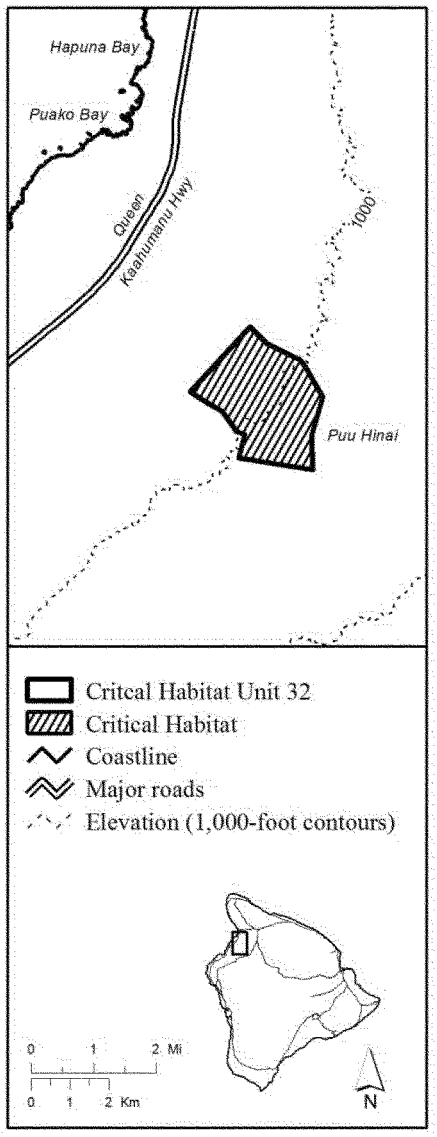
(i) [Reserved for textual description of Hawaii 32–*Bidens micrantha* ssp. *ctenophylla*–c.] This unit is also critical habitat for Hawaii 32–*Isodendrion pyrifolium*–c and Hawaii 32–*Mezoneuron kavaiense*–c (see paragraphs (k)(108) and (k)(109), respectively, of this section).

(ii) **NOTE:** Map 105 follows:

Map 105

Hawaii 32–*Bidens micrantha* ssp. *ctenophylla*–c, Hawaii 32– *Isodendrion pyrifolium* – c, Hawaii 32–*Mezoneuron kavaiense*–c

Lowland Dry



(108) Hawaii 32—*Isodendrion pyrifolium*–c (1,779 ac; 720 ha)

(i) See paragraph (k)(107)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(107)(ii) of this section for the map of this unit.

(109) Hawaii 32—*Mezoneuron kavaiense*–c (1,779 ac; 720 ha)

(i) See paragraph (k)(107)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(107)(ii) of this section for the map of this unit.

(110) Hawaii 33—*Bidens micrantha* ssp. *ctenophylla*–d (1,583 ac; 640 ha),

(i) [Reserved for textual description of Unit 33.] This unit is also critical habitat for Hawaii 33—*Isodendrion pyrifolium*–d and Hawaii 33—*Mezoneuron kavaiense*—d (see paragraphs (k)(111) and (k)(112), respectively of this section).

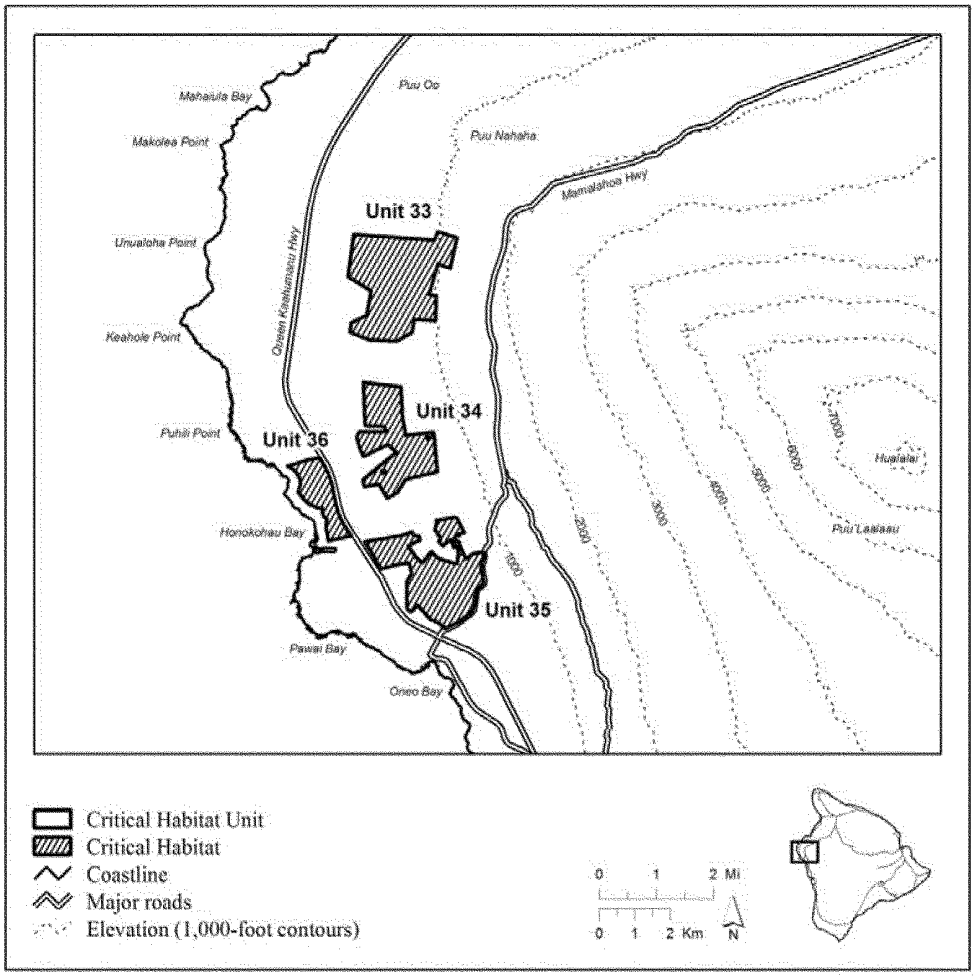
(ii) **NOTE:** Map 106 follows:

Map 106

Hawaii 33–*Bidens micrantha* ssp. *ctenophylla*–d, Hawaii 33–*Isodendrion pyrifolium*–d, Hawaii 33–*Mezoneuron kavaiense*–d; Hawaii 34–*Bidens micrantha* ssp. *ctenophylla*–e, Hawaii 34– *Isodendrion pyrifolium* –e, Hawaii 34–*Mezoneuron kavaiense*–e;

Hawaii 35–*Bidens micrantha* ssp. *ctenophylla*–f, Hawaii 35– *Isodendrion pyrifolium*–f, Hawaii 35–*Mezoneuron kavaiense*–f; Hawaii 36–*Bidens micrantha* ssp. *ctenophylla*–g, Hawaii 36–*Isodendrion pyrifolium*–g

Lowland Dry



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(111) Hawaii 33—*Isodendrion pyrifolium*–d (1,583 ac; 640 ha)

(i) See paragraph (k)(110)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(112) Hawaii 33—*Mezoneuron kavaiense*–d (1,583 ac; 640 ha)

(i) See paragraph (k)(110)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(113) Hawaii 34—*Bidens micrantha* ssp. *ctenophylla*–e (961 ac; 389 ha)

(i) [Reserved for textual description of Unit 34.] This unit is also critical habitat for Hawaii 34—*Isodendrion pyrifolium*–e and Hawaii 34—*Mezoneuron kavaiense*–e (see paragraphs (k)(114) and (k)(115), respectively of this section).

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(114) Hawaii 34—*Isodendrion pyrifolium*–e (961 ac; 389 ha)

(i) See paragraph (k)(113)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(115) Hawaii 34—*Mezoneuron kavaiense*–e (961 ac; 389 ha)

(i) See paragraph (k)(113)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(116) Hawaii 35—*Bidens micrantha* ssp. *ctenophylla*–f (1,192 ac; 485 ha)

(i) [Reserved for textual description of Unit 35.] This unit is also critical habitat for Hawaii 35—*Isodendrion pyrifolium*–f and Hawaii 35—*Mezoneuron kavaiense*—f (see paragraphs (k)(117) and (k)(118), respectively of this section).

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(117) Hawaii 35—*Isodendrion pyrifolium*–f (1,192 ac; 485 ha)

(i) See paragraph (k)(116)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(118) Hawaii 35—*Mezoneuron kavaiense*–f (1,192 ac; 485 ha)

(i) See paragraph (k)(116)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(119) Hawaii 36—*Bidens micrantha* ssp. *ctenophylla*–g (402 ac; 163 ha)

(i) [Reserved for textual description of Unit 36.] This unit is also critical habitat for Hawaii 36—*Isodendrion pyrifolium*–g (see paragraph (k)(120) of this section).

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(120) Hawaii 36—*Isodendrion pyrifolium*–g (402 ac; 163 ha)

(i) See paragraph (k)(119)(i) of this section for the textual description of this unit.

(ii) See paragraph (k)(110)(ii) of this section for the map of this unit.

(121) Table of Protected Species Within Each Critical Habitat Unit for the Island of Hawaii

Unit name	Species occupied	Species unoccupied
Hawaii 1—*Clermontia lindseyana*–a	*Clermontia lindseyana*	*Clermontia lindseyana.*
Hawaii 1—*Clermontia peleana*–a	*Clermontia peleana*	*Clermontia peleana.*
Hawaii 1—*Clermontia pyrularia*–a		*Clermontia pyrularia.*
Hawaii 1—*Cyanea shipmanii*–a	*Cyanea shipmanii*	*Cyanea shipmanii.*
Hawaii 1—*Phyllostegia racemosa*–a	*Phyllostegia racemosa*	*Phyllostegia racemosa.*
Hawaii 2—*Clermontia lindseyana*–b	*Clermontia lindseyana*	*Clermontia lindseyana.*
Hawaii 2—*Clermontia pyrularia*–b	*Clermontia pyrularia*	*Clermontia pyrularia.*
Hawaii 2—*Phyllostegia racemosa*–b	*Phyllostegia racemosa*	*Phyllostegia racemosa.*
Hawaii 3—*Clermontia peleana*–b	*Clermontia peleana*	*Clermontia peleana.*
Hawaii 3—*Cyanea platyphylla*–a	*Cyanea platyphylla*	*Cyanea platyphylla.*
Hawaii 3—*Cyrtandra giffardii*–a	*Cyrtandra giffardii*	*Cyrtandra giffardii.*
Hawaii 3—*Cyrtandra tintinnabula*–a	*Cyrtandra tintinnabula*	*Cyrtandra tintinnabula.*
Hawaii 3—*Phyllostegia warshaueri*–a	*Phyllostegia warshaueri*	*Phyllostegia warshaueri.*
Hawaii 4—*Isodendrion hosakae*–a		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*–b		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*–c		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*–d		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*–e		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*–f	*Isodendrion hosakae*	*Isodendrion hosakae.*
Hawaii 4—*Vigna o-wahuensis*–a		*Vigna o-wahuensis.*
Hawaii 4—*Vigna o-wahuensis*–b		*Vigna o-wahuensis.*
Hawaii 4—*Vigna o-wahuensis*–c		*Vigna o-wahuensis.*
Hawaii 5—*Nothocestrum breviflorum*–a		*Nothocestrum breviflorum.*
Hawaii 6—*Nothocestrum breviflorum*–b	*Nothocestrum breviflorum*	*Nothocestrum breviflorum.*
Hawaii 7—*Pleomele hawaiiensis*–a	*Pleomele hawaiiensis*	*Pleomele hawaiiensis.*
Hawaii 8—*Clermontia drepanomorpha*–a	*Clermontia drepanomorpha*	*Clermontia drepanomorpha.*
Hawaii 8—*Phyllostegia warshaueri*–b	*Phyllostegia warshaueri*	*Phyllostegia warshaueri.*
Hawaii 9—*Achyranthes mutica*–a		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–b	*Achyranthes mutica*	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–c		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–d		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–e		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–f		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–g		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–h		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–i		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*–j		*Achyranthes mutica.*
Hawaii 10—*Argyroxiphium kauense*–a		*Argyroxiphium kauense.*
Hawaii 10—*Bidens micrantha* ssp. *ctenophylla*–a		*Bidens micrantha* ssp. *ctenophylla.*
Hawaii 10—*Bonamia menziesii*–a		*Bonamia menziesii.*
Hawaii 10—*Colubrina oppositifolia*–a	*Colubrina oppositifolia*	*Colubrina oppositifolia.*
Hawaii 10—*Delissea undulata*–a		*Delissea undulata.*
Hawaii 10—*Delissea undulata*–b	*Delissea undulata*	*Delissea undulata.*

Unit name	Species occupied	Species unoccupied
Hawaii 10—*Hibiscadelphus hualalaiensis*–a	*Hibiscadelphus hualalaiensis*	*Hibiscadelphus hualalaiensis*.
Hawaii 10—*Hibiscus brackenridgei*–a	*Hibiscus brackenridgei*	*Hibiscus brackenridgei*.
Hawaii 10—*Isodendrion pyrifolium*–a		*Isodendrion pyrifolium*.
Hawaii 10—*Mezoneuron kavaiense*–a	*Mezoneuron kavaiense*	*Mezoneuron kavaiense*.
Hawaii 10—*Neraudia ovata*–a		*Neraudia ovata*.
Hawaii 10—*Nothocestrum breviflorum*–c	*Nothocestrum breviflorum*	*Nothocestrum breviflorum*.
Hawaii 10—*Pleomele hawaiiensis*–b	*Pleomele hawaiiensis*	*Pleomele hawaiiensis*.
Hawaii 10—*Solanum incompletum*–a		*Solanum incompletum*.
Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*–a	*Zanthoxylum dipetalum* ssp. *tomentosum*.	*Zanthoxylum dipetalum* ssp. *tomentosum*.
Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*–a	*Cyanea hamatiflora* ssp. *carlsonii*	*Cyanea hamatiflora* ssp. *carlsonii*.
Hawaii 11—*Solanum incompletum*–b		*Solanum incompletum*.
Hawaii 14—*Cyanea hamatiflora* ssp. *carlsonii*–b		*Cyanea hamatiflora* ssp. *carlsonii*.
Hawaii 15—*Cyanea hamatiflora* ssp. *carlsonii*–c		*Cyanea hamatiflora* ssp. *carlsonii*.
Hawaii 15—*Cyanea stictophylla*–a	*Cyanea stictophylla*	*Cyanea stictophylla*.
Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*–d	*Cyanea hamatiflora* ssp. *carlsonii*	*Cyanea hamatiflora* ssp. *carlsonii*.
Hawaii 16—*Cyanea stictophylla*–b	*Cyanea stictophylla*	*Cyanea stictophylla*.
Hawaii 17—*Diellia erecta*–a	*Diellia erecta*	*Diellia erecta*.
Hawaii 17—*Flueggea neowawraea*–a	*Flueggea neowawraea*	*Flueggea neowawraea*.
Hawaii 18—*Colubrina oppositifolia*–b	*Colubrina oppositifolia*	*Colubrina oppositifolia*.
Hawaii 18—*Diellia erecta*–b	*Diellia erecta*	*Diellia erecta*.
Hawaii 18—*Flueggea neowawraea*–b	*Flueggea neowawraea*	*Flueggea neowawraea*.
Hawaii 18—*Gouania vitifolia*–a	*Gouania vitifolia*	*Gouania vitifolia*.
Hawaii 18—*Neraudia ovata*–d	*Neraudia ovata*	*Neraudia ovata*.
Hawaii 18—*Pleomele hawaiiensis*–c	*Pleomele hawaiiensis*	*Pleomele hawaiiensis*.
Hawaii 19—*Mariscus fauriei*–a	*Mariscus fauriei*	*Mariscus fauriei*.
Hawaii 20—*Sesbania tomentosa*–a	*Sesbania tomentosa*	*Sesbania tomentosa*.
Hawaii 21—*Ischaemum byrone*–a		*Ischaemum byrone*.
Hawaii 22—*Ischaemum byrone*–b	*Ischaemum byrone*	*Ischaemum byrone*.
Hawaii 23—*Pleomele hawaiiensis*–d	*Pleomele hawaiiensis*	*Pleomele hawaiiensis*.
Hawaii 23—*Sesbania tomentosa*–b	*Sesbania tomentosa*	*Sesbania tomentosa*.
Hawaii 24—*Argyroxiphium kauense*–b	*Argyroxiphium kauense*	*Argyroxiphium kauense*.
Hawaii 24—*Asplenium fragile* var. *insulare*–a	*Asplenium fragile* var. *insulare*	*Asplenium fragile* var. *insulare*.
Hawaii 24—*Cyanea stictophylla*–c		*Cyanea stictophylla*.
Hawaii 24—*Melicope zahlbruckneri*–a		*Melicope zahlbruckneri*.
Hawaii 24—*Phyllostegia velutina*–a	*Phyllostegia velutina*	*Phyllostegia velutina*.
Hawaii 24—*Plantago hawaiensis*–a	*Plantago hawaiensis*	*Plantago hawaiensis*.
Hawaii 25—*Argyroxiphium kauense*–c	*Argyroxiphium kauense*	*Argyroxiphium kauense*.
Hawaii 25—*Plantago hawaiensis*–b	*Plantago hawaiensis*	*Plantago hawaiensis*.
Hawaii 25—*Silene hawaiiensis*–a	*Silene hawaiiensis*	*Silene hawaiiensis*.
Hawaii 26—*Hibiscadelphus giffardianus*–a	*Hibiscadelphus giffardianus*	*Hibiscadelphus giffardianus*.
Hawaii 26—*Melicope zahlbruckneri*–b	*Melicope zahlbruckneri*	*Melicope zahlbruckneri*.
Hawaii 27—*Portulaca sclerocarpa*–a	*Portulaca sclerocarpa*	*Portulaca sclerocarpa*.
Hawaii 27—*Silene hawaiiensis*–b	*Silene hawaiiensis*	*Silene hawaiiensis*.
Hawaii 28—*Adenophorus periens*–a	*Adenophorus periens*	*Adenophorus periens*.
Hawaii 29—*Clermontia peleana*–c	*Clermontia peleana*	*Clermontia peleana*.
Hawaii 29—*Cyanea platyphylla*–b	*Cyanea platyphylla*	*Cyanea platyphylla*.
Hawaii 29—*Cyrtandra giffardii*–b		*Cyrtandra giffardii*.
Hawaii 29—*Cyrtandra tintinnabula*–b		*Cyrtandra tintinnabula*.
Hawaii 30—*Argyroxiphium kauense*–d	*Argyroxiphium kauense*	*Argyroxiphium kauense*.
Hawaii 30—*Clermontia lindseyana*–c	*Clermontia lindseyana*	*Clermontia lindseyana*.
Hawaii 30—*Cyanea shipmanii*–b	*Cyanea shipmanii*	*Cyanea shipmanii*.
Hawaii 30—*Cyanea shipmanii*–c		*Cyanea shipmanii*.
Hawaii 30—*Cyanea stictophylla*–d		*Cyanea stictophylla*.
Hawaii 30—*Cyrtandra giffardii*–c	*Cyrtandra giffardii*	*Cyrtandra giffardii*.
Hawaii 30—*Phyllostegia racemosa*–c		*Phyllostegia racemosa*.
Hawaii 30—*Phyllostegia velutina*–b	*Phyllostegia velutina*	*Phyllostegia velutina*.
Hawaii 30—*Plantago hawaiensis*–c	*Plantago hawaiensis*	*Plantago hawaiensis*.
Hawaii 30—*Sicyos alba*–a	*Sicyos alba*	*Sicyos alba*.
Hawaii 31—*Bidens micrantha* ssp. *ctenophylla*–b	*Bidens micrantha* ssp. *ctenophylla*	*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 31—*Isodendrion pyrifolium*–b		*Isodendrion pyrifolium*.
Hawaii 31—*Mezoneuron kavaiense*–b	*Mezoneuron kavaiense*	*Mezoneuron kavaiense*.
Hawaii 32—*Bidens micrantha* ssp. *ctenophylla*–c		*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 32—*Isodendrion pyrifolium*–c		*Isodendrion pyrifolium*.
Hawaii 32—*Mezoneuron kavaiense*–c	*Mezoneuron kavaiense*	*Mezoneuron kavaiense*.
Hawaii 33—*Bidens micrantha* ssp. *ctenophylla*–d		*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 33—*Isodendrion pyrifolium*–d		*Isodendrion pyrifolium*.
Hawaii 33—*Mezoneuron kavaiense*–d	*Mezoneuron kavaiense*	*Mezoneuron kavaiense*.
Hawaii 34—*Bidens micrantha* ssp. *ctenophylla*–e	*Bidens micrantha* ssp. *ctenophylla*	*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 34—*Isodendrion pyrifolium*–e		*Isodendrion pyrifolium*.
Hawaii 34—*Mezoneuron kavaiense*–e	*Mezoneuron kavaiense*	*Mezoneuron kavaiense*.
Hawaii 35—*Bidens micrantha* ssp. *ctenophylla*–f	*Bidens micrantha* ssp. *ctenophylla*	*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 35—*Isodendrion pyrifolium*–f	*Isodendrion pyrifolium*	*Isodendrion pyrifolium*.
Hawaii 35—*Mezoneuron kavaiense*–f	*Mezoneuron kavaiense*	*Mezoneuron kavaiense*.

Unit name	Species occupied	Species unoccupied
Hawaii 36—*Bidens micrantha* ssp. *ctenophylla*–g	*Bidens micrantha* ssp. *ctenophylla*	*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 36—*Isodendrion pyrifolium*–g		*Isodendrion pyrifolium*.

* * * * *

(l) *Plants on Hawaii; Constituent elements.*

(1) *Flowering plants.*

* * * * *

(1) *Plants on Hawaii; Constituent elements.*

(1) *Flowering plants.*

* * * * *

FAMILY ASTERACEAE:

Bidens micrantha ssp. *ctenophylla* (KOOKOOLAU)

Hawaii 10—*Bidens micrantha* ssp. *ctenophylla*–a, Hawaii 31—*Bidens micrantha* ssp. *ctenophylla*–b, Hawaii 32—*Bidens micrantha* ssp. *ctenophylla*–c, Hawaii 33—*Bidens micrantha* ssp. *ctenophylla*–d, Hawaii 34—*Bidens micrantha* ssp. *ctenophylla*–e, Hawaii 35—*Bidens micrantha* ssp. *ctenophylla*–f, and Hawaii 36—*Bidens micrantha* ssp. *ctenophylla*–g, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Bidens micrantha* ssp. *ctenophylla* on Hawaii Island. In units Hawaii 10–*Bidens micrantha* ssp. *ctenophylla*–a, Hawaii 31—*Bidens micrantha* ssp. *ctenophylla*–b, Hawaii 32—*Bidens micrantha* ssp. *ctenophylla*–c, Hawaii 33—*Bidens micrantha* ssp. *ctenophylla*–d, Hawaii 34—*Bidens micrantha* ssp. *ctenophylla*–e, Hawaii 35—*Bidens micrantha* ssp. *ctenophylla*–f, and Hawaii 36—*Bidens micrantha* ssp. *ctenophylla*–g, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

* * * * *

FAMILY FABACEAE:

Mezoneuron kavaiense (UHIUHI)

Hawaii 10—*Mezoneuron kavaiense*–a, Hawaii 31—*Mezoneuron kavaiense*–b, Hawaii 32—*Mezoneuron kavaiense*–c, Hawaii 33—*Mezoneuron kavaiense*–d, Hawaii 34—*Mezoneuron kavaiense*–e, and Hawaii 35—*Mezoneuron kavaiense*–f, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Mezoneuron kavaiense* on Hawaii Island. In units Hawaii 10—*Mezoneuron kavaiense*–a, Hawaii 31—*Mezoneuron kavaiense*–b, Hawaii 32—*Mezoneuron kavaiense*–c, Hawaii 33—*Mezoneuron kavaiense*–d, Hawaii 34—*Mezoneuron kavaiense*–e, and Hawaii 35—*Mezoneuron kavaiense*–f, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

* * * * *

FAMILY VIOLACEAE:

Isodendrion pyrifolium (WAHINE NOHO KULA)

Hawaii 10—*Isodendrion pyrifolium*–a, Hawaii 31—*Isodendrion pyrifolium*–b, Hawaii 32—*Isodendrion pyrifolium*–c, Hawaii 33—*Isodendrion pyrifolium*–d, Hawaii 34—*Isodendrion pyrifolium*–e, Hawaii 35—*Isodendrion pyrifolium*–f, and Hawaii 36—*Isodendrion pyrifolium*–g, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Isodendrion pyrfolium* on Hawaii Island. In units Hawaii 10—*Isodendrion pyrifolium*–a, Hawaii 31—*Isodendrion pyrifolium*–b, Hawaii 32—*Isodendrion pyrifolium*–c, Hawaii 33—*Isodendrion pyrifolium*–d, Hawaii 34—*Isodendrion pyrifolium*–e, Hawaii 35—*Isodendrion pyrifolium*–f, and Hawaii 36—*Isodendrion pyrifolium*–g, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

* * * * *

Dated: September 13, 2012.

Michael Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–24550 Filed 10–16–12; 8:45 am]

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FEDERAL REGISTER

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No. 201 October 17, 2012

Part III

The President

Proclamation 8888—National School Lunch Week, 2012

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Vol. 77, No. 201
Wednesday, October 17, 2012

Presidential Documents

Title 3—

The President

Proclamation 8888 of October 12, 2012

National School Lunch Week, 2012

By The President Of The United States Of America

A Proclamation

Our children are the key to America's success in the 21st century, and it is incumbent upon us all to ensure they have the resources they need to reach their greatest potential—including access to healthy meals at school. During National School Lunch Week, we recognize all those whose dedicated work and care make good nutrition a reality for our sons and daughters.

Our students deserve the best possible chance to live healthy, productive lives. Since the National School Lunch Program was founded over six decades ago, schools have served over 200 billion lunches that have helped generations of children achieve in the classroom and grow into our country's next generation of leaders. This school year, the program will carry that legacy forward by providing nutritious meals for tens of millions of students every day. These meals are a vital source of fruits, vegetables, and other fresh and nutritious foods for our Nation's young people. Through efforts like First Lady Michelle Obama's *Let's Move!* initiative, we are continuing to bring together stakeholders at every level of government, in the private sector, and throughout our communities to ensure more children have access to the healthy, affordable food they need to learn and grow.

Soon after President Harry Truman signed the National School Lunch Act in 1946, he reminded us that ''nothing is more important in our national life than the welfare of our children, and proper nourishment comes first in attaining this welfare.'' This week, we thank the countless individuals who make our children's well-being their highest priority, and celebrate the National School Lunch Program as a foundation for their success in the years to come.

The Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October each year as ''National School Lunch Week,'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim the week of October 14 through October 20, 2012, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program in appropriate activities that support the health and well-being of our Nation's children.

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

[FR Doc. 2012–25742
Filed 10–16–12; 11:15 am]
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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 1272/P.L. 112–179
Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2012 (Oct. 5, 2012; 126 Stat. 1411)

H.R. 1791/P.L. 112–180
To designate the United States courthouse under construction at 101 South United States Route 1 in Fort Pierce, Florida, as the ''Alto Lee Adams, Sr., United States Courthouse''. (Oct. 5, 2012; 126 Stat. 1415)

H.R. 2139/P.L. 112–181
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H.R. 2240/P.L. 112–182
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H.R. 3556/P.L. 112–184
To designate the new United States courthouse in Buffalo, New York, as the ''Robert H. Jackson United States Courthouse''. (Oct. 5, 2012; 126 Stat. 1424)

H.R. 4158/P.L. 112–185
To confirm full ownership rights for certain United States astronauts to artifacts from the astronauts' space missions. (Oct. 5, 2012; 126 Stat. 1425)

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H.R. 4347/P.L. 112–187
To designate the United States courthouse located at 709 West 9th Street in Juneau, Alaska, as the ''Robert Boochever United States Courthouse''. (Oct. 5, 2012; 126 Stat. 1432)

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H.R. 6215/P.L. 112–190
To amend the Trademark Act of 1946 to correct an error in the provisions relating to remedies for dilution. (Oct. 5, 2012; 126 Stat. 1436)

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91 VA Major Construction Authorization and Expiring Authorities Extension Act of 2012 (Oct. 5, 2012; 126 Stat. 1437)

H.R. 6431/P.L. 112–192
To provide flexibility with respect to United States support for assistance provided by international financial institutions for Burma, and for other purposes. (Oct. 5, 2012; 126 Stat. 1441)

H.R. 6433/P.L. 112–193
FDA User Fee Corrections Act of 2012 (Oct. 5, 2012; 126 Stat. 1443)

S. 300/P.L. 112–194
Government Charge Card Abuse Prevention Act of 2012 (Oct. 5, 2012; 126 Stat. 1445)

S. 710/P.L. 112–195
Hazardous Waste Electronic Manifest Establishment Act (Oct. 5, 2012; 126 Stat. 1452)

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