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Presidential Documents

Title 3—

The President

Executive Order 13585 of September 30, 2011

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and the laws of the United States of America, and consistent with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 2013.

(a) Committee for the Preservation of the White House; Executive Order 11145, as amended (Department of the Interior).

(b) President's Commission on White House Fellowships; Executive Order 11183, as amended (Office of Personnel Management).

(c) President's Committee on the National Medal of Science; Executive Order 11287, as amended (National Science Foundation).

(d) Federal Advisory Council on Occupational Safety and Health; Executive Order 11612, as amended (Department of Labor).

(e) President's Export Council; Executive Order 12131, as amended (Department of Commerce).

(f) President's Committee on the International Labor Organization; Executive Order 12216, as amended (Department of Labor).

(g) President's Committee on the Arts and the Humanities; Executive Order 12367, as amended (National Endowment for the Arts).

(h) President's National Security Telecommunications Advisory Committee; Executive Order 12382, as amended (Department of Homeland Security).

(i) National Industrial Security Program Policy Advisory Committee; Executive Order 12829, as amended (National Archives and Records Administration).

(j) Trade and Environment Policy Advisory Committee; Executive Order 12905, as amended (Office of the United States Trade Representative).

(k) President's Committee for People with Intellectual Disabilities; Executive Order 12994, as amended (Department of Health and Human Services).

(l) National Infrastructure Advisory Council; Executive Order 13231, as amended (Department of Homeland Security).

(m) President's Council on Fitness, Sports, and Nutrition; Executive Order 13265, as amended (Department of Health and Human Services).

(n) President's Board of Advisors on Tribal Colleges and Universities; Executive Order 13270 (Department of Education).

(o) President's Advisory Commission on Asian Americans and Pacific Islanders; Executive Order 13515 (Department of Education).

Sec. 2. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in section 1 of this order shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 3. Sections 1 and 2 of Executive Order 13511 are superseded by sections 1 and 2 of this order.

Sec. 4. Executive Order 13515 of October 14, 2009, is amended:

(a) in section 2(a), by striking ''through the Secretaries of Education and Commerce, as Co-Chairs of the Initiative described in section 3 of this order'' and inserting in lieu thereof ''through the Co-Chairs of the Initiative'';

(b) in section 2(c), by striking ''Secretary of Education, in consultation with the Secretary of Commerce,'' and inserting in lieu thereof ''Co-Chairs of the Initiative'';

(c) in the introductory text to section 3:

(1) by striking ''The Secretary of Commerce and the Secretary of Education shall serve as the Co-Chairs of the Initiative'' and inserting in lieu thereof ''The Secretary of Education and a senior official to be designated by the President from the membership of the Initiative shall serve as Co-Chairs of the Initiative''; and

(2) by striking ''Secretaries'' and inserting in lieu thereof ''Co-Chairs''; and

(d) in section 3(b), in the list of agency members, by inserting ''the Department of Commerce'' after ''the Department of Agriculture'' and inserting ''the Department of Education'' after ''the Department of Energy'' and then redesignating the subsections of section 3(b) as appropriate.

Sec. 5. This order shall be effective September 30, 2011.

THE WHITE HOUSE,
September 30, 2011.

[FR Doc. 2011–26141
Filed 10–6–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8723 of October 3, 2011

National Arts And Humanities Month, 2011

By the President of the United States of America

A Proclamation

Norman Rockwell's magazine covers are classic and recognizable portrayals of American life. A longtime advocate of tolerance, Rockwell was criticized by some for a painting now hanging steps from the Oval Office—*The Problem We All Live With*. Inspired by the story of Ruby Bridges, this painting depicts a young girl being escorted to her newly-integrated school by United States Marshals. Today, the portrait remains a symbol of our Nation's struggle for racial equality.

Like Rockwell's painting, art in all its forms often challenges us to consider new perspectives and to rethink how we see the world. This image still moves us with its simple poignancy, capturing a moment in American history that changed us forever. This is the power of the arts and humanities—they speak to our condition and affirm our desire for something more and something better. Great works of literature, theater, dance, fine art, and music reach us through a universal language that unites us regardless of background, gender, race, or creed.

Millions of Americans earn a living in the arts and humanities, and the non-profit and for-profit arts industries are important parts of both our cultural heritage and our economy. The First Lady and I have been proud to honor this work by displaying American art at the White House and by hosting music, dance, poetry, and film performances and screenings. The President's Committee on the Arts and the Humanities, along with the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services continues to recognize the skill and creativity of American artists, historians, and philosophers while helping educate and inspire our children through the power of the arts and humanities.

We must recognize the contributions of the arts and humanities not only by supporting the artists of today, but also by giving opportunities to the creative thinkers of tomorrow. Educators across our country are opening young minds, fostering innovation, and developing imaginations through arts education. Through their work, they are empowering our Nation's students with the ability to meet the challenges of a global marketplace. It is a well-rounded education for our children that will fuel our efforts to lead in a new economy where critical and creative thinking will be the keys to success.

Today, the arts and humanities continue to break social and political barriers. Throughout our history, American hopes and aspirations have been captured in the arts, from the songs of enslaved Americans yearning for freedom to the films that grace our screens today. This month, we celebrate the enlightenment and insight we have gained from the arts and humanities, and we recommit to supporting expression that challenges our assumptions, sparks our curiosity, and continues to drive us toward a more perfect union.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2011 as

National Arts and Humanities Month. I call upon the people of the United States to join together in observing this month with appropriate ceremonies, activities, and programs to celebrate the arts and the humanities in America.

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

[FR Doc. 2011–26142
Filed 10–6–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8724 of October 3, 2011

National Breast Cancer Awareness Month, 2011

By the President of the United States of America

A Proclamation

This month, pink ribbons will be displayed around our country, adorning jackets and public spaces alike. A sign of solidarity, these ribbons remind us of our commitment to preventing and treating breast cancer, and to supporting those courageously battling this disease. Countless Americans will participate in events to raise awareness alongside survivors and their families, working together to support research that will save lives.

We have come far in recent decades in the prevention, early detection, and treatment of breast cancer. Still, this year, hundreds of thousands of women will be diagnosed with breast cancer, and too many will be lost. African-American women bear a particularly large burden, experiencing higher death rates from breast cancer than other racial or ethnic groups in the United States. Too many men also develop and fall victim to this cancer.

It is important to understand the risks and precautions associated with breast cancer. Some risk factors, like obesity, are avoidable. Other factors, like family history, are not avoidable, but knowledge of them can help inform medical decisions. Taking protective steps like getting regular check-ups, maintaining a healthy body weight and balanced diet, and exercising may help lower the chances of developing breast cancer. I encourage all Americans to talk to their doctors about breast cancer, and to visit www.Cancer.gov to learn more about symptoms, diagnosis, and treatment.

Screening and early detection are essential to fighting this disease, yet only about two-thirds of American women over 40 have had a mammogram in the last 2 years. But now, thanks to the Affordable Care Act, all Americans joining new health-care plans can receive recommended preventive services, including annual mammograms for women over 40, with no out-of-pocket costs. This new benefit would also ensure that women in new insurance plans who are at high risk for breast cancer are covered when they speak with their clinicians about ways to prevent or delay the development of cancer. The Affordable Care Act also established a committee tasked with advancing awareness and prevention of breast cancer among young women.

This month, we join together in honoring the women and men lost to breast cancer. In their memory, we recommit to supporting the hard-working researchers, health-care providers, advocates, and organizations dedicated to treating and curing this devastating disease. We embrace our mothers, daughters, sisters, and loved ones currently battling breast cancer, along with their friends and families, and we resolve to one day defeat it.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2011 as National Breast Cancer Awareness Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and all other interested groups to join in activities that will increase awareness of what Americans can do to prevent and control breast cancer.

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

[FR Doc. 2011–26143
Filed 10–6–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8725 of October 3, 2011

National Cybersecurity Awareness Month, 2011

By the President of the United States of America

A Proclamation

Americans, along with people around the world, depend on the Internet and digital tools for all aspects of our lives—from mobile devices to online commerce and social networking. This fundamental reliance is why our digital infrastructure is a strategic national asset, and why its security is our shared responsibility. This month, we recognize the role we all play in ensuring our information and communications infrastructure is interoperable, secure, reliable, and open to all.

Early in my Administration, we began updating our Nation's cybersecurity programs and policies. We developed a comprehensive plan that ensures a coordinated national response to major disruptive cyber events. This May, we also proposed to the Congress a plan to strengthen protection of our power grids, water systems, and other critical infrastructure. And because we have seen the benefits and risks of cyber- and information-related technologies play out across the world, this year we laid out the first comprehensive international vision for the future of the Internet. It sets an agenda for partnering with other nations and better defines how we can ensure the secure, free flow of information and promote universal rights, privacy, and prosperity.

Every American has a stake in securing our networks and personal information, and we are working across the public and private sectors to ensure coordinated and planned responses to cyber incidents, as we do with natural disasters. The vast majority of our critical information infrastructure is owned and operated by businesses and enterprises across America. To help protect them, my Administration is collaborating with the private sector on best security practices, while continuing to provide the resources necessary for innovation—including expanded broadband access and smarter electric grids.

Cybersecurity is a necessity for both businesses and consumers, and that is why we released the National Strategy for Trusted Identities in Cyberspace. This plan improves security for consumers conducting e-commerce by helping prevent fraud and identity theft and by making it easier for businesses to operate online. We are also working with community-based organizations and public- and private-sector partners to empower digital citizens to make safe choices online through our ''Stop. Think. Connect.'' campaign.

The same American ingenuity that put a man on the moon also created the Internet, launching an information revolution. We must now harness that spirit of innovation to develop the next generation of accessible, secure technologies to build a safer, more prosperous future for all Americans.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2011 as National Cybersecurity Awareness Month. I call upon the people of the United States to recognize the importance of cybersecurity and to observe this month with activities, events, and trainings that will enhance our national security and resilience.

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

[FR Doc. 2011–26144
Filed 10–6–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8726 of October 3, 2011

National Disability Employment Awareness Month, 2011

By the President of the United States of America

A Proclamation

Utilizing the talents of all Americans is essential for our Nation to out-innovate, out-educate, and out-build the rest of the world. During National Disability Employment Awareness Month, we recognize the skills that people with disabilities bring to our workforce, and we rededicate ourselves to improving employment opportunities in both the public and private sectors for those living with disabilities.

More than 20 years after the signing of the Americans with Disabilities Act, individuals with disabilities, including injured veterans, are making immeasurable contributions to workplaces across our country. Unfortunately, the unemployment rate for people with disabilities remains too high—nearly double the rate of people without disabilities—and reversing this trend is crucial.

In both the public and private sectors, we can increase employment opportunities for Americans with disabilities. My Administration is promoting competitive, integrated employment for persons with disabilities and the elderly through the Centers for Medicare and Medicaid Services. Last year, we also recommitted to making the Federal Government a model employer for people living with disabilities. Agencies are working harder than ever to promote equal hiring practices and increase retention, while also expanding internships, fellowships, and training opportunities.

We know education is the foundation on which all children can build bright and successful futures, and no child should be limited in his or her desire to learn. In September, we announced the final regulations under the Individuals with Disabilities Education Act, Part C, to improve services and outcomes for infants and toddlers with disabilities and their families during the critical years before kindergarten. The educational environments we are creating for children with disabilities will ensure they are better prepared to succeed in the classroom and later in the workplace, helping position our Nation to lead in the 21st century.

Work accessibility is just as vital to success as ensuring educational and hiring opportunities. Public transportation is a service that should be available to all Americans, and rules instated this year by the Department of Transportation require new rail construction or renovations to ensure accessibility to persons with disabilities. We are also improving our compliance with Section 508 of the Rehabilitation Act to make Federal agencies' electronic and information technology more accessible to individuals with disabilities. This will ensure all applicants have equal opportunity to apply for jobs, and it will allow Federal employees to better use technology at work.

To win the future, we must harness the power of our Nation's richest resource—our people. Americans with disabilities, like all Americans, are entitled to not only full participation in our society, but also full opportunity in our society. Their talents and contributions are vital to the strength of our Nation's workforce and our future prosperity. Together, we can ensure

persons living with disabilities have equal access to employment, and to inclusive, supportive workplaces.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2011 as National Disability Employment Awareness Month. I urge all Americans to embrace the talents and skills that individuals with disabilities bring to our workplaces and communities and to promote the right to equal employment opportunity for all people.

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

[FR Doc. 2011–26146
Filed 10–6–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8727 of October 3, 2011

National Domestic Violence Awareness Month, 2011

By the President of the United States of America

A Proclamation

During Domestic Violence Awareness Month, we recognize the significant achievements we have made in reducing domestic violence in America, and we recommit ourselves to the important work still before us. Despite tremendous progress, an average of three women in America die as a result of domestic violence each day. One in four women and one in thirteen men will experience domestic violence in their lifetime. These statistics are even more sobering when we consider that domestic violence often goes unreported.

The ramifications of domestic violence are staggering. Young women are among the most vulnerable, suffering the highest rates of intimate partner violence. Exposure to domestic violence puts our young men and women in danger of long-term physical, psychological, and emotional harm. Children who experience domestic violence are at a higher risk for failure in school, emotional disorders, and substance abuse, and are more likely to perpetuate the cycle of violence themselves later in life.

My Administration is working not only to curb domestic violence, but to bring it to an end. Last year, we announced an unprecedented coordinated strategy across Federal agencies to prevent and stop violence against women. We are empowering survivors to break the cycle of abuse with programs to help them become financially independent. We have prevented victims of domestic violence from being evicted or denied assisted housing after abuse. And we are promoting tools for better enforcement of protective orders, while helping survivors gain access to legal representation.

In addition, as part of the Affordable Care Act, the Department of Health and Human Services announced historic new guidelines that will ensure women receive preventive health services without additional cost, including domestic violence screening and counseling. The Affordable Care Act also ensures that insurance companies can no longer classify domestic violence as a pre-existing condition.

Last December, I reauthorized the Child Abuse Prevention and Treatment Act, giving communities life-saving tools to help identify and treat child abuse or neglect. It also supports shelters, service programs, and the National Domestic Violence Hotline, linking tens of thousands of victims every month to the resources needed to reach safety. I encourage victims, their loved ones, and concerned citizens to use this hotline for more information at 1–800–799-SAFE or visit www.TheHotline.org.

This is not just a job for government; it is a job for all of us. Vice President Joe Biden's ''1is2many'' initiative reminds us that everyone has a part to play in ending violence against youth. By engaging men and women, mothers and fathers, and schools and universities in the fight, we can teach our children about healthy relationships. We are asking everyone to play an active role in preventing and ending domestic violence, by stepping up to stop violence when they see it. During National Domestic Violence Awareness Month, we recommit to making sure that no one suffers alone, and to assisting those who need help in reaching a safer tomorrow.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2011 as National Domestic Violence Awareness Month. I call on all Americans to speak out against domestic violence and support local efforts to assist victims of these crimes in finding the help and healing they need.

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

[FR Doc. 2011–26147
Filed 10–6–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8728 of October 3, 2011

National Substance Abuse Prevention Month, 2011

By the President of the United States of America

A Proclamation

By providing strong support systems for our loved ones, and by talking with our children about the dangers of alcohol and other drugs, we can increase their chances of living long, healthy, and productive lives. During National Substance Abuse Prevention Month, we celebrate those dedicated to prevention efforts, and we renew our commitment to the well-being of all Americans.

The damage done by drugs is felt far beyond the millions of Americans with diagnosable substance abuse or dependence problems—countless families and communities also live with the pain and heartbreak it causes. Relationships are destroyed, crime and violence blight communities, and dreams are shattered. Substance abuse touches every sector of our society, straining our health care and criminal justice systems.

For all these reasons, my Administration has made prevention a central component of our *National Drug Control Strategy*, and we have developed the first-ever *National Prevention Strategy*. These strategies, inspired by the thousands of drug-free coalitions across our country, recognize the power of community-based prevention organizations, and suggest that prevention activities are most effective when informed by science, driven by State and local partnerships, and tuned to the specific needs of a community.

By investing in evidence-based prevention, we can also decrease emergency room visits and lower rates of chronic disease, easing the burden on America's health care system. We can improve student achievement and workforce readiness. Most importantly, we must continue to support the efforts of parents and guardians, our children's first teachers and role models, whose positive influence is the most effective deterrent to alcohol and other drug use and the strongest influence for making health choices.

Through national collaboration, community programs, and the help of engaged youth, parents, guardians, educators, law enforcement officers, clergy, and others, we can build a stronger, healthier America. This month and throughout the year, let us teach our Nation's young people to tackle life's challenges with resilience, hope, and determination.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2011 as National Substance Abuse Prevention Month. I call upon all Americans to engage in appropriate programs and activities to promote comprehensive substance abuse prevention efforts within their communities.

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

[FR Doc. 2011–26148
Filed 10–6–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8729 of October 3, 2011

Child Health Day, 2011

By the President of the United States of America

A Proclamation

One of the greatest responsibilities we have as a Nation is to ensure the health and well-being of our children. Today, we rededicate ourselves to providing our children with the quality health care, healthy food, clean environments, and safe schools and communities they deserve.

We have taken important steps that speak to who we are as a Nation that cares for its families and children. Young adults are the least likely to have health insurance, but now, thanks to the Affordable Care Act, young adults can stay on their parents' insurance plan until they turn 26. As a result, approximately one million more have insurance coverage than 1 year ago. In addition, it is now illegal for health insurance companies to limit or deny coverage to children based on pre-existing conditions.

Getting children off to a healthy start at home and at school is vital to their success. This year, through the First Lady's *Let's Move!* Initiative, Americans have shown their overwhelming commitment to children's health—over 1,250 schools met our HealthierUS School Challenge, thousands of child care providers are adopting healthier practices, and 1.7 million Americans achieved the Presidential Active Lifestyle Award. I also signed the Healthy, Hunger-Free Kids Act, making significant improvements to our school lunches, and we released a redesigned food pyramid—MyPlate—to encourage better eating.

Making sure kids grow up in safe environments is just as important to ensuring their well-being. In March, we hosted the White House Conference on Bullying Prevention because no child should feel unsafe or be afraid to be who they are at school or in their community. To keep children safe from hazards, we have taken great strides to provide for cleaner air and drinking water, and to reduce children's exposure to lead dust. To make school buildings safer, the American Jobs Act I have proposed would provide for investments that would put Americans back to work while making important repairs to schools, like removing asbestos and updating technology.

On Child Health Day, we recognize the fundamental importance of caring for the health of our next generation, and we recommit to helping our children, their families, and our communities fulfill the dream of healthy, happy, and secure futures.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as Child Health Day and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Monday, October 3, 2011, as Child Health Day. I call upon families, child health professionals, faith-based and community organizations, and all levels of government to help ensure that America's children stay safe and healthy.

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

[FR Doc. 2011–26149
Filed 10–6–11; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 76, No. 195
Friday, October 7, 2011

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

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

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 3505–AC35

Privacy Act: Implementation

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of the Treasury makes technical corrections to an appendix to its regulations regarding disclosure of records. These amendments update the name of the former Bureau of Alcohol, Tobacco and Firearms to the Alcohol and Tobacco Tax and Trade Bureau, and also update the contact information for the Alcohol and Tobacco Tax and Trade Bureau and the procedures by which individuals may request disclosure of information under the Privacy Act. These amendments do not change the Department's interpretation of any regulation or the requirements of any recordkeeping provision.

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

FOR FURTHER INFORMATION CONTACT: Karen Welch, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 046 or e-mail *Karen.Welch@ttb.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a, pertains to the disclosure of information about individuals that is maintained by Federal government agencies. It requires Federal government agencies to make available records pertaining to an individual upon the request of that individual, and forbids Federal government agencies from disclosing records containing information about an individual without the individual's consent, subject to certain exceptions.

The regulations pertaining to the disclosure of records by the Department of the Treasury and its components are contained in 31 CFR part 1. The regulations implementing the Privacy Act are contained in 31 CFR part 1, subpart C, and set forth the procedures by which individuals may request notification of whether the Department of the Treasury maintains or has disclosed a record pertaining to them or may seek access to such records maintained in any nonexempt system of records. Subpart C is accompanied by appendix E, which describes the procedures applicable to each component of the Department of the Treasury. Individuals requesting records from a Treasury Department component under the Privacy Act must comply with the procedures detailed in the appropriate appendix.

Prior to January 24, 2003, the Bureau of Alcohol, Tobacco and Firearms was a component of the Department of the Treasury. Effective January 24, 2003, the Homeland Security Act of 2002 divided that Bureau into two new entities—the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the Department of Justice. TTB, the Bureau that remained within the Department of the Treasury, is responsible for administering chapters 51 (relating to distilled spirits, wine, and beer) and 52 (relating to tobacco products and cigarette papers and tubes) of title 26 U.S.C., the Internal Revenue Code of 1986, as amended (IRC). TTB also administers sections 4181 and 4182 (relating to the excise tax on firearms and ammunition) of the IRC and title 27 of the U.S.C. (relating to alcohol).

As a result of the organizational change, information in appendix E to 31 CFR part 1, subpart C needs to be updated to reflect TTB's information and procedures. TTB's procedures regarding requests for disclosures under the Privacy Act should be set forth in appendix E to subpart C of 31 CFR part 1.

Therefore, the Department of the Treasury issues this document to amend the information contained in this appendix by: (1) Changing the name of the relevant agency from the "Bureau of Alcohol, Tobacco and Firearms" to the "Alcohol and Tobacco Tax and Trade Bureau;" (2) changing the listed mailing address to that of TTB; and (3) updating the Privacy Act-related procedures to allow individuals to make certain requests to TTB by fax as well as by postal mail.

In accordance with Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action" and, therefore, does not require a Regulatory Impact Analysis. In addition, the regulation 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. Therefore, it has been determined that this final rule does not have federalism implications under Executive Order 13132.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

These regulations are being published as a direct final rule because the amendments do not impose any new requirements on any member of the public and do not substantively alter the procedures relating to the way in which the Department of the Treasury or TTB currently handles Privacy Act obligations. These amendments are the most efficient means for the Department of the Treasury to correct outdated information concerning the means by which an individual may request disclosures of information from TTB. Accordingly, pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and other public comment procedures with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective upon the date of its publication in the **Federal Register**.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, subpart C of title 31 of the Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as

amended. Subpart C also issued under 5 U.S.C. 552a, as amended.

■ 2. Appendix E to Subpart C of part 1 is revised to read as follows:

Appendix E to Subpart C of Part 1—Alcohol and Tobacco Tax and Trade Bureau

1. *In general.* This appendix applies to the Alcohol and Tobacco Tax and Trade Bureau. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(3), (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determination under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Alcohol and Tobacco Tax and Trade Bureau, will be made by the Director, Regulations and Rulings Division, or the delegate of such officer. Requests may be mailed or delivered in person to:

Privacy Act Request, Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005. Requests may also be faxed to 202–453–2331.

3. *Requests for amendment of record.* Initial determinations under 31 CFR 1.27 (a) through (d) with respect to requests to amend records maintained by the Alcohol and Tobacco Tax and Trade Bureau will be made by the Director, Regulations and Rulings Division. Requests for amendment of records may be mailed or delivered in person to:

Privacy Act Request, Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005. Requests may also be faxed to 202–453–2331. The Bureau will process a faxed request when the request meets the identity verification requirements outlined in paragraph 4(a) of this Appendix.

4. *Verification of identity.* (a) In addition to the requirements specified in 31 CFR 1.26(d) of this appendix, each request for notification, access or amendment of records made by mail or fax shall contain the requesting individual's date and place of birth and a statement signed by the requester asserting his or her identity and stipulating that the requester understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is a misdemeanor and punishable by a fine of up to $5,000 provided, that the Alcohol and Tobacco Tax and Trade Bureau may require a signed notarized statement verifying the identity of the requester.

(b) Individuals making requests in person will be required to exhibit at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester.

(c) The parent or guardian of a minor or a person judicially determined to be incompetent, shall in addition to establishing the identity of the minor or other person he represents as required in (a) and (b), establish his own parentage or guardianship by furnishing a copy of a birth certificate showing parentage (or other satisfactory documentation) or a court order establishing the guardianship.

5. *Request for physical inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the records may be inspected. The inspection of records will be made at the Alcohol and Tobacco Tax and Trade Bureau Field Office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the field office or other facility where the disclosure is made. A person of the requester's own choosing may accompany the requester provided the requester furnishes a written statement authorizing the disclosure of the requester's record in the accompanying person's presence. The record inspection will be made in the presence of a representative of the Bureau. Following the inspection of the record, the individual will acknowledge in writing the fact that he or she had an opportunity to inspect the requested record.

6. *Requests for copies of records without prior physical inspection.* Upon determining that an individual's request for copies of his or her records without prior physical inspection is to be granted, the requester shall be notified in writing of the determination, and the location and time for his or her receipt of the requested copies. The copies will be made available at the Alcohol and Tobacco Tax and Trade Bureau field office or other facility located nearest to the residence of the individual making the request, unless the individual requests that the documents be sent by mail. Copies shall be received by the requester during the regular business hours of the field office or other facility where the disclosure is made. Transfer of the copies to the individual shall be conditioned upon payment of copying costs and his presentation of at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester. Following the receipt of the copies in person, the individual will acknowledge receipt in writing.

7. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Alcohol and Tobacco Tax and Trade Bureau, including extensions of time on appeal, will be made by the Administrator or the delegate of such officer. Appeals should be addressed to, or delivered in person to:

Privacy Act Amendment Appeal, Administrator, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005.

8. *Statements of disagreement.* "Statements of Disagreement" as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification within 35 days of the date of such notification and should be limited to one page.

9. *Service of process.* Service of process will be received by the Administrator of the Alcohol and Tobacco Tax and Trade Bureau or the delegate of such official and shall be delivered to the following location:

Administrator, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005, Attention: Chief Counsel.

10. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for each pertinent system.

Signed: September 12, 2011.

Veronica Marco,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2011–25922 Filed 10–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0830]

RIN 1625–AA08

Special Local Regulations; Line of Sail Marine Parade, East River and Brunswick River, Brunswick, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of the East River and the Brunswick River in Brunswick, Georgia during the Line of Sail Marine Parade on Saturday, October 8, 2011. The marine parade will consist of approximately 10 to 20 vessels. The marine parade will begin at Brunswick

Landing Marina. From Brunswick Landing Marina, the marine parade will transit southeast on the East River, head east on the Brunswick River, and then turn around at St. Simons Pier. The marine parade will then return to Brunswick Landing Marina by the same route. These special local regulations are necessary to provide for the safety of life on navigable waters during the marine parade. The special local regulations consist of a series of moving buffer zones around participant vessels as they transit from Brunswick Landing Marina to St. Simons Pier and back. Persons and vessels that are not participating in the marine parade are prohibited from entering, transiting through, anchoring in, or remaining within any of the buffer zones unless authorized by the Captain of the Port Savannah or a designated representative.

DATES: This rule is effective from 11 a.m. until 3 p.m. on October 8, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0830 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0830 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Marine Science Technician Third Class Rolando Nodal, Marine Safety Unit Savannah, Coast Guard; telephone 912–652–4353, e-mail *Rolando.A.Nodal2@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard did not receive notice of the Line of Sail Marine Parade with sufficient time to publish an NPRM or 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 spectators and spectator vessels are anticipating the event taking place on the scheduled time. The special local regulations are needed to minimize risk to and provide separation between marine parade participants, participant vessels, spectators, and the 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**.

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 the navigable waters during the Line of Sail Marine Parade.

Discussion of Rule

On October 8, 2011, the Line of Sail Marine Parade will be held on the East River and the Brunswick River in Brunswick, Georgia. The marine parade will consist of approximately 10 to 20 vessels. The marine parade will begin at Brunswick Landing Marina, transit southeast on the East River, head east on the Brunswick River, and then turn around at St. Simons Pier. The marine parade will then return to Brunswick Landing Marina by the same route.

The special local regulations consist of a series of buffer zones around vessels participating in the Line of Sail Marine Parade. These buffer zones are as follows: (1) All waters within 500 yards of the lead marine parade vessel; (2) all waters within 100 yards of the last marine parade vessel; and (3) all waters within 50 yards of all marine parade vessels. Notice of the special local regulations, including the identities of the lead marine parade vessel and the last marine parade vessel, will be provided prior to the event by Local Notice to Mariners and Broadcast Notice to Mariners. These special local regulations will be enforced from 11 a.m. until 3 p.m. on October 8, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring, or remaining within the buffer zones unless authorized by the Captain of the Port Savannah or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the buffer zones may contact the Captain of the Port Savannah by telephone at 912–652–4353, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the buffer zones is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

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.

Executive Order 12866 and Executive Order 13563

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only four hours; (2) although persons and vessel will not be able to enter, transit through, anchor in, or remain within any of the buffer zones without authorization from the Captain of the Port Savannah or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the buffer zones if authorized by the Captain of the Port Savannah or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 East River and the Brunswick River encompassed within the special local regulations from 11 a.m. until 3 p.m. on October 8, 2011. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

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 so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness 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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a marine parade. Under figure 2–1, paragraph (34)(h), 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 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.T07–0830 to read as follows:

§ 100.T07–0830 Special Local Regulations; Line of Sail Marine Parade, East River and Brunswick River, Brunswick, GA.

(a) *Regulated Area.* (1) The following buffer zones are regulated areas during the Line of Sail Marine Parade:

(i) All waters within 500 yards of the lead marine parade vessel;

(ii) All waters within 100 yards of the last marine parade vessel; and

(iii) All waters within 50 yards of all marine parade vessels.

(2) The identities of the lead marine parade vessel and the last marine parade vessel will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The marine parade will begin at Brunswick Landing Marina. From Brunswick Landing Marina, the marine parade will transit southeast on the East River, head east on the Brunswick River, and then turn around at St. Simons Pier. The marine parade will then return to Brunswick Landing Marina by the same route.

(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 Savannah in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Savannah or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Savannah by telephone at 912–652–4353, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

(3) 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) *Effective date.* This rule is effective from 11 a.m. until 3 p.m. on October 8, 2011.

Dated: September 15, 2011.

J.B. Loring,

Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 2011–26115 Filed 10–5–11; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0589]

RIN 1625–AA00

Safety Zone; Rotary Club of Fort Lauderdale New River Raft Race, New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the New River, from Esplanade Park to the Henry Kinney Tunnel, in Fort Lauderdale, Florida during the Rotary Club of Fort Lauderdale New River Raft Race. The race is scheduled to take place on Saturday, November 19, 2011. The temporary safety zone is necessary for the safety of race participants, participant vessels, spectators, and the general public during the 550 yard raft race. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 11:59 a.m. until 2:30 p.m. on November 19, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0589 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0589 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Jennifer.S.Makowski@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 22, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Rotary Club of Fort Lauderdale New River Raft Race, New River, Fort Lauderdale, FL in the **Federal Register** (76 FR 24840). We received one comment on the proposed rule which promoted the establishment of this regulation. No public meeting was requested, and none was held.

Basis and Purpose

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

The purpose of this rule is to protect race participants, participant vessels, spectators, and the general public during the Rotary Club of Fort Lauderdale New River Raft Race.

Discussion of Comments and Changes

There was one supportive comment in regards to the NPRM. No changes have been made to the regulatory text of this rule.

Discussion of Rule

On November 19, 2011, the Rotary Club of Fort Lauderdale New River Raft Race will be held on the New River in Fort Lauderdale, Florida. This event consists of a 550 yard raft race on the New River starting at Esplanade Park and finishing at the Henry Kinney Tunnel. Approximately 100 participants are scheduled to compete in the race.

The temporary safety zone encompasses the race area of the Rotary Club of Fort Lauderdale New River Raft Race on the New River, in Fort Lauderdale, Florida. The temporary safety zone is effective from 11:59 a.m. until 2:30 p.m. on November 19, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port Miami via telephone at 305–

535–4472, or a designated representative via VHF radio on channel 16. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for less than three hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This 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 New River encompassed within the safety zone from 11:59 a.m. until 2:30 p.m. on November 19, 2011. 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness 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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction. This rule involves establishing a temporary safety zone, as described in paragraph 34(g) of the Instruction, on the waters of the New River in Fort Lauderdale, Florida that will be in effect for less than three hours. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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 a temporary § 165.T07–0589 to read as follows:

§ 165.T07–0589 Safety Zone; Rotary Club of Fort Lauderdale New River Raft Race, New River, Fort Lauderdale, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the New River contained within an imaginary line connecting the following points: starting at Point 1 in position 26°07′10″ N, 80°08′52″ W; thence southeast to Point 2 in position 26°07′05″ N, 80°08′34″ W; thence southwest to Point 3 in position 26°07′04″ N, 80°08′35″ W thence northwest to Point 4 in position 26°07′08″ N, 80°08′52″ W; thence north 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) All 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) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami via 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.

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

(d) *Effective Date.* This rule is effective from 11:59 a.m. until 2:30 p.m. on November 19, 2011.

Dated: September 25, 2011.

C.P. Scraba,

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

[FR Doc. 2011–25974 Filed 10–6–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–9476–2]

California: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: California has applied for final authorization of certain revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed California's application and has reached a final determination that the revisions to California's hazardous waste program satisfy all of the requirements necessary to qualify for final authorization. Thus, with respect to these revisions, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

DATES: *Effective Date:* Final authorization for the revisions to California's hazardous waste management program shall be effective at 1 p.m. on October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Zac Appleton, WST–3, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco 94105–3901, (415) 972–3321.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of

changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

California initially received final authorization on July 23, 1992, effective August 1, 1992 (57 FR 32726), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to California's program on September 26, 2001, effective September 26, 2001 (66 FR 49118). EPA made the tentative determination to approve subsequent changes to California's program when it invited public comment in a **Federal Register** Notice on September 30, 2010 (75 FR 60398).

B. What were the comments and responses to EPA's proposal?

On September 30, 2010, EPA published a tentative determination announcing its intent to grant California final authorization for the revisions to its base program. Further background on the tentative decision to grant authorization appears at Vol. 75, No. 189, September 30, 2010 at pages 60398–60403.

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA received no comments.

C. What decisions have we made in this rule?

EPA has made the final determination that California's application for authorization of the subject revisions meets all of the statutory and regulatory requirements established by RCRA. Therefore, with respect to the revisions, we are granting California final authorization to operate its hazardous waste program as described in the revisions authorization application. California will continue to have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before such states are authorized for the requirements. Thus, for revisions to the Federal program for which California has not yet sought authorization, EPA will continue to implement those HSWA requirements and prohibitions in California, including issuing permits, until the State is granted authorization to do so.

D. What is the effect of today's action?

A facility in California subject to RCRA must comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons must comply with any applicable Federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. California continues to have enforcement responsibilities under its State law to pursue violations of its hazardous waste management program. EPA continues to have independent authority under RCRA Sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports,
- Enforce RCRA requirements (including State-issued statutes and regulations that are authorized by EPA and any applicable Federally-issued statutes and regulations) and suspend or revoke permits, and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action approving the subject revisions does not impose additional requirements on the regulated community because the regulations for which California is being authorized are already effective under State law and are not changed by the act of authorization.

EPA cannot delegate the Federal requirements at 40 CFR part 262, subparts E and H. Although California has adopted these requirements verbatim from the Federal regulations in Title 22 of the California Code of Regulations, Sections 66260–66262, EPA will continue to implement those requirements.

E. What rules are we authorizing with today's action?

On August 2, 2004 and August 17, 2004 California submitted final complete program revision applications, seeking authorization of changes in accordance with 40 CFR 271.21. California applied for only the Federal changes relating to the corrective action management units, the Bevill exclusion and the land disposal restrictions.

What follows is a summary, for each category identified by California in its submittals, of the specific subjects of changes to the Federal program for that category. Although the changes to the Federal program are identified in the summary, California did not necessarily make revisions to its program as a result of each Federal revision noted. For example, certain revisions to the Federal program may have resulted in less stringent regulation than that which previously existed. Since states may maintain programs which are more stringent than the Federal program, states have the option whether or not to adopt such revisions.

1. Changes California Identified as Relating to Corrective Action Management Units

We are granting California final authorization for revisions to its program due to certain changes to the Federal Corrective Action Management Unit program.

2. Changes California Identified as Relating to Land Disposal Restrictions Phases 3 and 4

We are granting California final authorization for revisions to its program due to certain changes to the Federal program in the following areas: (1) Land Disposal Restrictions Phase III—Decharacterized Wastewaters; (2) Emergency Extension of the K088 Capacity Variance; (3) Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; (4) Emergency Revision of the Carbamate Land Disposal Restrictions; (5) Clarification of Standards for Hazardous Waste LDR Treatment Variances; (6) Treatment Standards for Metal Wastes and Mineral Processing Wastes; (7) Hazardous Soils Treatment Standards and Exclusions; (8) Administrative Stay for Zinc Micronutrient Fertilizers; (9) Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production; (10) Extension of Compliance Date for Characteristic Slags; (11) Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); (12) Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes; (13) Deferral for PCBs in Soil; and (14) Certain Land Disposal Restrictions Technical Corrections and Clarifications. Note that California has not yet adopted the provisions addressed by the following Federal final rules which are also part of Phase IV of the land disposal restrictions requirements: LDR Revision Checklist 195 (66 FR 58258, November 20, 2001, as amended by 67 FR 17119, April 9, 2002); non-LDR Revision Checklist 200 (67 FR 28393, July 24, 2002); and LDR

Revision Checklist 201 (67 FR 62618, October 7, 2002).

3. Changes California Identified as Relating to the Bevill Exclusion

We are granting California final authorization for all revisions to its program due to certain changes to the Federal program in the Bevill Exclusion requirements.

EPA published a table in its notice of its tentative decision to authorize the foregoing revisions to California's hazardous waste management program, which shows the Federal and analogous State provisions involved in this decision and the relevant corresponding checklists (75 FR 60398, 60400–6040, September 30, 2010).

F. Where are the State rules different from the Federal rules?

State requirements that go beyond the scope of the Federal program are not part of the authorized program and EPA cannot enforce them. Although persons must comply with these requirements in accordance with California law, they are not RCRA requirements. EPA considers that the following State requirements, which pertain to the revisions involved in this decision, go beyond the scope of the Federal program.

The following analysis differs in some ways from the areas which California identified as being broader in scope than the Federal program in its application.

1. The definition of "remediation waste" at 22 C.C.R. § 66260.10 is broader in scope than the Federal definition at 40 CFR 260.10 only to the extent California's definition includes hazardous substances which are neither "hazardous wastes" nor '"solid wastes."

2. California regulation subjects CAMUs for non-RCRA hazardous waste to state-specific requirements under 22 CCR 66264.552.5. The state requirement at 22 CCR 66264.552.5 is broader in scope because the federal program does not consider these wastes to be hazardous. In addition, 22 CCR 66264.550(a) is also considered broader in scope to the extent that it subjects non-RCRA wastes to the state-only CAMU requirements.

3. California did not adopt the Federal definitions at 40 CFR 261.1(c)(9)–(12), 261.4(a)(13)–(14), and 261.6(a)(3)(ii) addressing scrap metals or the related Federal changes to 40 CFR 261.2(c)(4)/Table. California's program is broader in scope to the extent that the statutory provisions at HS&C § 25143.2(a) and (e), do not exclude these scrap metals from regulation.

4. The California provisions at 22 CCR 66268.7(a)–(c) are broader in scope than the Federal land disposal treatment provisions at 40 CFR 268.7(a)–(c) to the extent that the State's provisions also apply to non-RCRA wastes. Similarly, California's variance petition provisions at 22 CCR 66268.44(c) and 66268.44(h) are also broader in scope to the extent that they apply to non-RCRA wastes.

G. What is EPA's position on California's regulation of conditionally exempt small quantity generators?

When California initially received final authorization for the base RCRA program on July 23, 1992, effective August 1, 1992 (57 FR 32726), EPA Pacific Southwest Region (Region IX) identified California's failure to adopt the federal exclusion for conditionally exempt small quantity generators (CESQGs) (found, generally, at 40 CFR 261.5) as "broader in scope" than the federal program. (*See also* 40 CFR 270.1(c)(2)(iii).) However, EPA's position regarding the absence of the conditional exclusion for CESQGs in a state program has changed and EPA now clearly regards the absence of any such exclusion as more stringent than the federal program, making state regulation of CESQGs federally enforceable when authorized. See *United States* v. *Southern Union Co.,* 643 F. Supp. 2d 201 (D.R.I. 2009). In order to harmonize our authorization of California's program with EPA's position with respect to CESQGs, EPA is hereby redesignating California's regulation of CESQGs as more stringent than the federal program. Therefore, the State's regulation of such federally exempt CESQGs will be part of the authorized state program and will be federally enforceable within the State of California. Specifically, this change will allow federal enforcement of State requirements applicable to CESQGs who are conditionally exempt under the federal provisions found at 40 CFR 261.5, 266.100(b)(3) and 270.1(c)(2)(iii). This change will not result in any new requirements on CESQGs, but will only mean that the more stringent State requirements for CESQGs will be federally enforceable.

H. Who handles permits after this authorization takes effect?

California will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA prior to California being authorized for these revisions will continue in force until the effective date of the State's issuance or denial of a State RCRA permit, or the permit otherwise expires or is revoked. California will administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until such time as California has issued a corresponding State permit. EPA will not issue any more new permits or new portions of permits for provisions for which California is authorized after the effective date of this authorization. EPA will retain responsibility to issue permits for HSWA requirements for which California is not yet authorized.

I. How does today's action affect Indian country (18 U.S.C. 1151) in California?

California is not authorized to carry out its hazardous waste program in Indian country within the State. Indian country includes all lands within the exterior boundaries of an Indian reservation, any land held in trust by the United States for an Indian tribe whether or not formally designated as an Indian reservation, and any other land, whether within or outside of an Indian reservation, that qualifies as Indian country under 18 U.S.C. 1151. A list of Indian Tribes in California can be found on the Web at *http://www.bia.gov,* under the section "Region Selector."

Therefore, this action has no effect on the Indian country within the States' borders. EPA will continue to implement and administer the RCRA program in Indian country within the State.

J. What is codification and is EPA codifying California's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart F for codification of California's program at a later date.

K. Statutory and Executive Order Reviews

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

This action approves the subject revisions and does not impose additional requirements on the regulated community because the regulations for which California is being authorized are already effective under State law and are not changed by the act of authorization. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the Paperwork Reduction Act.

3. Regulatory Flexibility Act

After considering the economic impacts of this rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act.

5. Executive Order 13132: Federalism

Executive Order 13132 does not apply to this rule because it will not have federalism implications (*i.e.,* substantial direct effects on the State, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government) as described in Executive Order 13132.

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

Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects 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). As stated previously, this action would have no effect on the Indian country within the State's borders and EPA will continue to implement and administer the RCRA program in Indian country within the State.

7. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks.

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

This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, Section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule.

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

Because this rule addresses authorizing pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

11. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

12. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 8, 2011.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2011–25899 Filed 10–6–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 110

RIN 0906–AA83

Countermeasures Injury Compensation Program (CICP): Administrative Implementation, Final Rule

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Final rule; technical amendments.

SUMMARY: This document adopts the Countermeasures Injury Compensation Program Administrative Implementation Interim Final Rule as the final rule with technical amendments. The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to establish the Countermeasures Injury Compensation Program (CICP or Program). The Department of Health and Human Services (HHS) is issuing this final rule to adopt the administrative policies, procedures, and requirements for the CICP set out in the interim final rule, which was published and effective on October 15, 2010. This Program is designed to provide benefits to certain persons who sustain serious physical injuries or death as a direct result of administration or use of covered countermeasures identified by the Secretary in declarations issued under the PREP Act. In addition, the Secretary may provide death benefits to certain survivors of individuals who died as the direct result of such covered injuries or their health complications. The Secretary makes only minor technical amendments to the interim final rule, described below, and otherwise adopts the regulation as published on October 15, 2010.

DATES: This rule is effective October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Vito Caserta, Director, Countermeasures Injury Compensation Program, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C–06, 5600 Fishers Lane, Rockville, MD 20857. Phone calls can be directed to (855) 266–CICP (2427). This is a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This regulation adopts the interim final rule that administratively established the compensation program

authorized by the Public Readiness and Emergency Preparedness Act (the PREP Act), which added new authorities under sections 319F–3 and 319F–4 of the Public Health Service Act, as amended (PHS Act) (42 U.S.C. 247d–6d, 247d–6e). The PREP Act, which was enacted as part of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006 (Pub. L. 109–148) on December 30, 2005, confers broad liability protections to covered persons and authorizes compensation to eligible individuals who sustain serious physical injuries or death as the direct result of the administration or use of a covered countermeasure for a disease, condition, or threat that the Secretary of Health and Human Services (the Secretary) determines either constitutes a current public health emergency or may in the future constitute such an emergency. This determination is identified in a declaration issued by the Secretary under the PREP Act.

Both the liability protections and the compensation authorized under the PREP Act are invoked by declarations issued by the Secretary (hereinafter PREP Act declarations or declarations) (section 319F–3(b) of the PHS Act (42 U.S.C. 247d–6d(b)). Through the issuance of such PREP Act declarations, the Secretary makes a determination that a disease, condition, or other threat to health constitutes a public health emergency, or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency.

The Secretary publishes all PREP Act declarations, and amendments to such declarations, in the **Federal Register**. In addition, they are posted on the Department's Web site at *http://www.phe.gov/Preparedness/legal/prepact/Pages/default.aspx* and on the Countermeasures Injury Compensation Program's (hereinafter "CICP" or "Program") Web site at *http://www.hrsa.gov/countermeasurescomp/*. As of September 2011, the Secretary had published declarations with respect to the following countermeasures: (1) Pandemic influenza vaccines (including, but not limited to the influenza A H1N1 2009 monovalent vaccine which will be referred to hereafter as the 2009 H1N1 vaccine); (2) anthrax countermeasures; (3) botulism countermeasures; (4) the influenza antiviral drugs Tamiflu® and Relenza® when used for pandemic purposes; (5) smallpox countermeasures; (6) acute radiation syndrome countermeasures; (7) pandemic influenza diagnostics, personal respiratory devices, and respiratory support devices; and (8) the influenza antiviral drug peramivir when used to treat pandemic H1N1 2009 influenza (which will be referred to hereafter as 2009 H1N1). Several of these declarations have been amended, some on multiple occasions.

In addition to establishing the PREP Act's liability protections for covered persons, the PREP Act authorized the Secretary to establish a program to provide compensation to eligible individuals for certain covered injuries sustained as the direct result of the administration or use of a covered countermeasure identified in a PREP Act declaration. The Secretary delegated the authority to operate the compensation program described in section 319F–4 of the PHS Act (42 U.S.C. 247d–6e) to the Administrator of the Health Resources and Services Administration (HRSA) on November 8, 2006. Pursuant to this delegation of authority, HRSA established and administers the CICP.

Under the CICP, certain persons may be eligible for benefits for covered injuries sustained as a direct result of the administration or use of covered countermeasures. The PREP Act stipulates that the CICP must follow, with very limited exceptions, the Smallpox Vaccine Injury Compensation Program (SVICP) for eligibility and compensation determinations (section 319F–4(b)(4) of the PHS Act (42 U.S.C. 247d–6e(b)(4)). In addition, the elements of compensation are almost identical to those available under the SVICP (section 319F–4(b)(2) of the PHS Act (42 U.S.C. 247d–6e(b)(2)). The SVICP was established under the Smallpox Emergency Personnel Protection Act of 2003 (SEPPA) and its implementing regulations are available at 42 CFR part 102. Specifically, the PREP Act provides that (with limited exceptions) the CICP is to follow the SEPPA, the SVICP regulations implementing the SEPPA, and such additional or alternate regulations as the Secretary may promulgate for purposes of this section (section 319F–4(b)(4) of the PHS Act (42 U.S.C. 247d–6e(b)(4)). The Secretary is issuing this final rule under that authority.

On October 15, 2010, the Secretary published an interim final rule establishing the procedures and requirements governing the CICP. Although the interim final rule was effective on the date of publication, the Secretary sought public comments and indicated that she might amend the procedures and requirements described in the interim final rule based on the comments received. No public comments were received on the interim final rule. On October 21, 2010, the Secretary published minor corrections to the interim final rule in the **Federal Register** (75 FR 64955).

As authorized under the PREP Act, the Secretary is herein adopting, as the final rule, the interim final rule that was effective on October 15, 2010 with minor technical amendments. Specifically, this final rule makes three amendments to the interim final rule to correct typographical errors and one amendment for purposes of clarification. First, the final rule amends section 110.3(f)(1) (included in the definition of a covered countermeasure) by replacing the reference to "§ 110.3(aa)" with "§ 110.3(bb)." Second, the final rule amends section 110.3(g) (which includes the definition of a covered injury) by replacing the reference to "§ 110.20(b)" (concerning covered injuries generally) with "§ 110.3(z)" (the definition of a serious injury). Both of these amendments are technical in nature and correct typographical errors. Third, the final rule amends section 110.42(f) (concerning deadlines for filing Request Forms based on the initial publication of a Table of Injuries or on modifications to an existing Table) by moving "within one year after the effective date of the establishment of, or amendment to, the Table" from the end of the sentence and inserting it at the beginning of the sentence, immediately following "In such circumstances,." This amendment also is technical in nature, and clarifies that, within one year of the effective date of the publication of a new Table or of an amendment to an existing Table, requesters who were previously denied eligibility for benefits must file a new Request Form, and requesters who did not previously file a Request Form must do so.

The Secretary is aware that the preamble to the interim final rule contained several errors in the cross-references to certain paragraphs and subparagraphs, similar to the first two amendments to the regulatory text described above. However, these errors were entirely typographical in nature and had no substantive implications, so they are not addressed here.

Additionally, the Secretary notes that, as permitted by the Privacy Act, the individuals administering the National Vaccine Injury Compensation Program (VICP) and the CICP for the Department may share records that are filed with either of the programs. For instance, the VICP and CICP may want to share medical records of an individual who applied to both programs.

Justification for Waiver of Delayed Effective Date

The Secretary has found that a delay in the effective date of this final rule is unnecessary because the amendments made to the previous interim final rule are merely corrections of typographical errors and one clarification. Through the enactment of the PREP Act, the Secretary was authorized to establish and administer the Program. Congress authorized the Secretary to issue regulations implementing the PREP Act as the Secretary deems reasonable and necessary. In accordance with that statutory authority, the Secretary established the procedures and requirements to govern the Program, and published them as an interim final rule with a 60-day comment period. The Department received no public comments in response to the publication of the interim final rule on October 15, 2010 and with three minor exceptions, the text of the interim final rule is being adopted without change in this final rule. A delay in the effective date of this final rule, which adopts the interim final rule with only minor technical changes is unnecessary and contrary to the public interest. It is important for individuals requesting Program benefits to know that the procedures and requirements set out in the interim final rule remain unchanged.

Economic and Regulatory Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

In 2011, the President issued Executive Order 13563, which supplements and reaffirms Executive Order 12866. Executive Order 13563 provides that, to the extent feasible and permitted by law, the public shall be provided with a meaningful opportunity to comment through the Internet on any proposed regulations, with at least a 60-day comment period. In addition, to the extent feasible and permitted by law, agencies must provide timely on-line access to both proposed and final rules of the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be searched and downloaded. Federal agencies must consider approaches to maintain the freedom of choice and flexibility, including disclosure of relevant information to the public. Regulations must be guided by objective scientific evidence, easy to understand, consistent, and written in plain language. Furthermore, Federal agencies must attempt to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for the public. The interim final rule published on October 15, 2010 satisfied these requirements.

The Secretary has determined that minimal resources are required to implement the provisions included in this regulation. Therefore, in accordance with the Regulatory Flexibility Act (RFA) of 1980, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this final rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this final rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. The Secretary has determined that this final rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801, and that this final rule also comports with the 2011 supplemental requirements of Executive Order 13563.

Unfunded Mandates Reform Act of 1995: The Secretary has determined that this final rule will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Federalism Impact Statement: The Secretary has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Impact on Family Well-Being: This final rule will not adversely affect the following elements of family well-being. Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. In fact, this final rule may have a positive impact on the disposable income and poverty elements of family well-being to the extent that injured persons, their families or survivors receive, or are helped by, medical, lost employment income, and/or death benefits paid under this part without imposing a corresponding burden on them.

Impact of the New Rule: In this final rule, the Secretary adopts the administrative procedures and requirements applicable to requesters filing for benefits under the Program, as established in the interim final rule. This final rule will have the effect of enabling certain eligible individuals who sustained covered injuries as the direct result of receiving a covered countermeasure under the Secretary's declaration, to receive benefits under the Program. In the event that an otherwise eligible injured countermeasure recipient has died, his or her estate and/or survivors may be entitled to certain benefits.

Paperwork Reduction Act of 1995: The information collection requirements remain unchanged.

List of Subjects in 42 CFR Part 110

Benefits, Biologics, Compensation, Immunization, Public health, Pandemic, Countermeasures, Pandemic influenza, 2009 H1N1 vaccine, Influenza antivirals, Tamiflu®, Relenza®, Peramivir, Pandemic influenza diagnostics, Personal respiratory devices, N–95 filtering facepiece respirators, Respiratory support devices, Ventilators, Anthrax, Smallpox, Botulism, Acute radiation syndrome.

Dated: September 27, 2011.

Mary Wakefield,

Administrator, Health Resources and Services Administration.

Approved: September 27, 2011.

Kathleen Sebelius,

Secretary.

For the reasons stated in the preamble, the Secretary adopts the interim final rule adding 42 CFR part 110, published at 75 FR 63656 on Friday, October 15, 2010, as a final rule with the following amendments:

PART 110—COUNTERMEASURES INJURY COMPENSATION PROGRAM

■ 1. The authority section for part 110 continues to read as follows:

Authority: 42 U.S.C. 247d–6e.

■ 2. Amend § 110.3 by revising paragraphs (f) introductory text, (f)(1) and (g) introductory text to read as follows:

§ 110.3 Definitions.

* * * * *

(f) *Covered Countermeasure* means the term that is defined in section 319F–3(i)(1) of the PHS Act and described in a declaration issued under section 319F–3(b) of the PHS Act (42 U.S.C. 247d–6d(i)(I), (b)). To be a covered countermeasure for purposes of this part, the countermeasure must have been administered or used pursuant to the terms of a declaration, or in a good faith belief of such; and

(1) Administered or used within a State (as defined in § 110.3(bb)), or otherwise in the territory of the United States; or

* * * * *

(g) *Covered Injury* means death, or a serious injury as described in § 110.3(z), and determined by the Secretary in accordance with § 110.20 of this part to be:

* * * * *

■ 3. Amend § 110.42 by revising paragraph (f) to read as follows:

§ 110.42 Deadlines for filing Request Forms.

* * * * *

(f) *Request Forms (or amendments to Request Forms) based on initial publication of a Table of Injuries or modifications to an existing Table.* The Secretary may publish a new Table (or Tables) by amendment(s) to subpart K of this part. The effect of such a new Table or amendment may enable a requester who previously could not establish a Table injury to do so. In such circumstances, within one year after the effective date of the establishment of, or amendment to, the Table, the requester must file a new Request Form if one was previously submitted and eligibility was denied or if one was not previously submitted. If the Secretary has not made a determination, she will automatically review any pending Request Forms in light of the new or amended Table(s).

* * * * *

[FR Doc. 2011–25858 Filed 10–6–11; 8:45 am]

BILLING CODE 4165–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PS Docket No. 06–229; WT Docket 06–150; WP Docket 07–100; FCC 11–113]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission considered a request for declaratory ruling filed by the City of Charlotte, North Carolina, seeking guidance on the scope of permissible operations under section 337 of the Communications Act as undertaken by state, local and other governmental entities in the public safety broadband spectrum of the 700 MHz band. The Commission dismissed the request, but clarified that a reasonably broad interpretation of the definition of "public safety services" under section 337 of the Act would allow some of the uses proposed by Charlotte and other commenters.

DATES: Effective October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Jennifer Manner, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street, SW., Room 7–C761, Washington, DC 20554. Telephone: (202)–418–3619, e-mail: *jennifer.manner@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order,* FCC 11–113, adopted July 20, 2011, and released July 21, 2011. The *Fourth Report and Order* is available at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0721/FCC–11–113A1.pdf.*

Summary of Fourth Report and Order

The Commission considered a request for declaratory ruling filed by the City of Charlotte, North Carolina (Charlotte), requesting that the Commission clarify that "[t]erritories, possessions, states, counties, towns or similar State or local governmental entities that qualify as 700 MHz lessees/users have as their sole or principal purpose the protection of the safety of life, health and property and are permitted to use 700 MHz broadband spectrum for activities conducted by their personnel including, but not limited to, activities of police, fire and medical emergency first responders." The Commission determined that the plain language of section 337 of the Communications Act does not support this broad presumption, and it accordingly dismissed Charlotte's request. The Commission clarified, however, that there is sufficient flexibility within section 337 to encompass many of the state and local government uses of the spectrum contemplated by Charlotte and by other commenters.

Regulatory Flexibility Act

This *Fourth Report and Order* does not promulgate any "rule" as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2) *et. seq.,* so the Commission is not required to prepare a Final Regulatory Flexibility Analysis at this stage of this proceeding.

Paperwork Reduction Act Analysis

The *Fourth Report and Order* contains no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission shall send a copy of the *Fourth Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–26023 Filed 10–6–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA753

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the northern Florida west coast subzone to the commercial harvest of king mackerel in or from the exclusive economic zone (EEZ). This closure is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, October 7, 2011, until 12:01 a.m., local time, July 1, 2012, unless changed by further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or e-mail: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish

(king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico (Gulf) only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the Gulf of Mexico eastern zone into northern and southern subzones, and established their separate commercial quotas. The northern Florida west coast subzone is located in Federal waters of the Gulf north of 26°19.8′ N lat. (a line directly west from the Lee/Collier County, FL boundary) and east of 87°31.1′ W long. (a line directly south from the Alabama/Florida boundary). The quota for the northern subzone is 168,750 lb (76,544 kg)(50 CFR 622.42(c)(1)(ii)).

In accordance with 50 CFR 622.43(a), NMFS is required to close any zone to the commercial harvest of king mackerel when the zone's quota has been reached, or is projected to be reached, by filing a notification with the Office of the **Federal Register**. NMFS has determined the commercial quota for Gulf group king mackerel in the northern Florida west coast subzone will be reached by October 7, 2011. Accordingly, commercial fishing for Gulf group king mackerel in the northern Florida west coast subzone is closed effective 12:01 a.m., local time, October 7, 2011, until 12:01 a.m., local time, July 1, 2012, the end of the current fishing year.

During the closure period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in Federal waters of the closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit and also has a commercial king mackerel permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed subzone under the 2-fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds the need to immediately implement this commercial closure constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery resource because the capacity of the commercial fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: October 4, 2011.

Steven Thur,

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

[FR Doc. 2011–26015 Filed 10–4–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 195
Friday, October 7, 2011

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 31

[Docket No. DHS–2008–0076]

RIN 1601–AA52

Ammonium Nitrate Security Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of public meetings.

SUMMARY: The National Protection and Programs Directorate of the Department of Homeland Security is announcing a series of public meetings to consult with the public on a notice of proposed rulemaking (NPRM), entitled "Ammonium Nitrate Security Program," which was published in the **Federal Register** on August 3, 2011. Under the proposed rule, the Department of Homeland Security would regulate the sale and transfer of ammonium nitrate pursuant to section 563 of the Fiscal Year 2008 Department of Homeland Security Appropriations Act with the purpose of preventing the use of ammonium nitrate in an act of terrorism. The Department seeks public input on the proposed rule, particularly input regarding the questions and issues raised in the NPRM and raised in this notice of public meetings.

Dates, Times, and Locations: Public meetings are scheduled to be held on the following dates at the following locations.

Jackson, Mississippi—Tuesday, October 11, 2011, 10 a.m.–2 p.m., Jackson Marriott, 200 East Amite Street, Jackson, MS 39201, Windsor Ballroom 1&2.

Lubbock, Texas—Thursday, October 13, 2011, 10 a.m.–2 p.m., Holiday Inn Hotel & Towers, 801 Avenue Q, Lubbock, TX 79401, S. Plains Conf Center.

Sacramento, California—Tuesday, October 18, 2011, 10 a.m.–2 p.m., DoubleTree Hotel Sacramento, 2001 Point West Way, Sacramento, CA 95815, Capitol Ballroom, Salon B/C.

Knoxville, Tennessee—Thursday, October 20, 2011, 10 a.m.–2 p.m., Knoxville Marriott, 500 E Hill Ave, Knoxville, TN 37915, Georgia/Carolina Ballroom.

Overland Park, Kansas (near Kansas City, Missouri)—Tuesday, October 25, 2011, 10 a.m.–2 p.m., Overland Park Marriott, 10800 Metcalf Ave, Overland Park, KS 66210.

Oklahoma City, Oklahoma—Thursday, October 27, 2011, 10 a.m.–2 p.m., Sheraton Oklahoma City Hotel, 1 North Broadway Ave, Oklahoma City, OK 73102.

Savannah, Georgia—Tuesday, November 1, 2011, 10 a.m.–2 p.m., Hilton Savannah DeSoto, 15 East Liberty Street, Savannah, Ga. 31401–3979.

Charleston, West Virginia—Thursday, November 3, 2011, 10 a.m.–2 p.m., Ramada Charleston Downtown, 600 Kanawha Blvd East, Charleston, WV 25303.

Mobile, Alabama—Tuesday, November 8, 2011, 10 a.m.–2 p.m., Mobile Marriott, 3101 Airport Blvd, Mobile AL 36606, Magnolia-Camellia Ballroom.

Washington, District of Columbia—Thursday, November 10, 2011, 10 a.m.–2 p.m., The Kellogg Conference Hotel at Gallaudet University, 800 Florida Ave, NE., Washington, DC 20002.

Denver, Colorado—Tuesday, November 15, 2011, 10 a.m.–2 p.m., Grand Hyatt Denver, 1750 Welton Street, Denver, CO 80202.

The Department of Homeland Security may announce changes to the current schedule or additional public meeting dates, times, and locations in a subsequent notice or notices to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ammonium Nitrate Security Program Manager, U.S. Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Security Compliance Division (NPPD/ISCD), 245 Murray Lane, SW., Mail Stop 0610, Arlington, VA 20598–0610, telephone number (703) 235–5263. For additional information on public meeting facilities, information on access to those facilities for individuals with disabilities, or to request special assistance at public meetings, please contact the Ammonium Nitrate Security Program Manager at (703) 235–5263.

SUPPLEMENTARY INFORMATION:

Background

Section 563 of the Fiscal Year 2008 Department of Homeland Security Appropriations Act amends the Homeland Security Act of 2002 and directs DHS to "regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility to prevent the misappropriation or use of ammonium nitrate in an act of terrorism." *See* Pub. L. 110–161, Division E (2007). That statute also directs DHS to consult with appropriate private sector entities, State governments, heads of other Federal departments and agencies, and other appropriate stakeholders in developing and implementing ammonium nitrate regulations. *See id.,* 6 U.S.C. 488a(b); 488a(g); and 488a(i)(4)(B). The Department published an advance notice of proposed rulemaking on October 29, 2008 seeking public comment on a Secure Handling of Ammonium Nitrate Program, which was followed by the notice of proposed rulemaking for the Ammonium Nitrate Security Program published for public comment on August 3, 2011. *See* 73 FR 64280 (advance notice of proposed rulemaking); 76 FR 46908 (notice of proposed rulemaking).

Purpose

The National Protection and Programs Directorate of the Department of Homeland Security will hold public meetings to consult with the public and with other interested parties on the notice of proposed rulemaking (NPRM) for the Ammonium Nitrate Security Program. The agenda for the public meetings will consist of a presentation by the Department on the elements of the NPRM, followed by comments from the attending public concerning the proposed rulemaking.

Public Meeting Procedures and Participation

For those members of the public that cannot attend the scheduled public meetings, a copy of the Department's presentation provided at the public meetings will made available via the Department's Ammonium Nitrate Security Program Web site in mid-October at *http://www.dhs.gov/files/*

programs/ammonium-nitrate-security-program.shtm.

Each meeting is open to the public and each is expected to last up to a total of four hours. Please note that a public meeting may adjourn early if all commenters present have had the opportunity to speak prior to the scheduled conclusion of the meeting. DHS will use sign-in sheets to voluntarily collect contact information from the attending public and to properly log oral comments received during the meetings. Providing contact information will be voluntary, and members of the public may also make anonymous oral comments. Seating may be limited, but session organizers will make every effort to suitably accommodate all participants. In order to allow as many members of the public as possible to speak, each speaker must limit his/her remarks to three minutes.

A transcript of each of these public meetings will be provided in the electronic docket for the Ammonium Nitrate Security Program rulemaking, docket number DHS–2008–0076, available at *http://www.regulations.gov.* Written comments on the proposed Ammonium Nitrate Security Program may also be submitted to the Department of Homeland Security. As specified in the NPRM, you may submit comments, identified by docket number DHS–2008–0076, by one of the following methods:

- *Federal eRulemaking Portal:* Follow the instructions at *http://www.regulations.gov* for submitting comments.
- *Mail:* U.S. Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Security Compliance Division (NPPD/ISCD), 245 Murray Lane, SW., Mail Stop 0610, Arlington, VA 20598–0610.

To avoid duplication, please use only one of these methods to submit written comments.

Key Comments Solicited by the Department

The Department is soliciting comments on all aspects of the NPRM. Of particular interest are comments addressing the following major issues:

Ammonium Nitrate Use and Characteristics

1. The types, quantities, and concentrations of ammonium nitrate and ammonium nitrate mixtures produced, used, sold, and transferred in the United States.

2. The detonability of ammonium nitrate and ammonium nitrate mixtures of different quantities and concentrations.

Registration

1. The level of access to the Internet that potential registration applicants currently have and/or the level of access potential applicants anticipate having in the future.

2. How potential registration applicants who do not have readily-accessible Internet access could obtain the access necessary to register online.

3. How to best notify agents (AN Agents) when ammonium nitrate purchasers (AN Purchasers) submit those AN Agents' names to the Department prior to sale or transfer of ammonium nitrate.

4. The efficiency and sufficiency of notifying applicants of registration number (AN Registered User Number) approvals and denials via e-mail or other electronic means.

5. The proposed regulatory coverage of truck drivers and other ammonium nitrate transporters.

Verification

1. The proposed requirement that certain forms of identification should be acceptable for purposes of a visual identity verification check.

2. The advisability, costs, and benefits of enabling AN Agents to provide AN Purchasers' identity verification information directly to ammonium nitrate sellers (AN Sellers) when it is not possible for an AN Seller to verify the identity of the AN Purchaser in person.

3. Possible alternative methods that could be employed to verify AN Purchasers' identities in sales or transfers involving AN Agents.

Recordkeeping

1. The benefits and costs of maintaining records regarding the AN Purchaser (and, where applicable, AN Agent) verification process.

2. How ammonium nitrate facility (AN Facility) personnel should notify AN Purchasers and AN Agents that the information they provide may be shared with the Department.

Dated: October 3, 2011.

Penny Anderson,

Director, Infrastructure Security Compliance Division, Department of Homeland Security.

[FR Doc. 2011–26051 Filed 10–6–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. APHIS–2011–0099]

Multi-Agency Informational Meeting Concerning Compliance With the Federal Select Agent Program; Public Meeting

AGENCIES: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify all interested parties, including individuals and entities possessing, using, or transferring federally listed biological agents and toxins, that a meeting will be held to provide specific regulatory guidance related to the Federal Select Agent Program established under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The meeting is being organized by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, the Department of Health and Human Services' Centers for Disease Control and Prevention, and the Department of Justice's Federal Bureau of Investigation, Criminal Justice Information Services. Issues to be discussed include personnel reliability programs, pre-employment background screenings, occupational health programs, and BSL4 surety programs.

DATES: The meeting will be held on November 16, 2011, from 7:30 a.m. to 5 p.m. Persons who wish to attend the meeting must register by October 14, 2011.

ADDRESSES: The meeting will be held at The Howard H. Baker, Jr. Center for Public Policy, 1640 Cumberland Avenue, Knoxville, TN 37996.

FOR FURTHER INFORMATION CONTACT: *APHIS:* Ms. Cassie Armiger, Program Analyst, APHIS Select Agent Program, APHIS, 4700 River Road, Unit 2, Riverdale, MD 20737; (301) 734–5960.

CDC: Dr. Eduardo O'Neill, Training & Outreach Officer, Division of Select Agents and Toxins, CDC, 1600 Clifton Road MS A–46, Atlanta, GA 30333; (404) 718–2000.

SUPPLEMENTARY INFORMATION: Title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, "Enhancing Controls on Dangerous Biological Agents and Toxins" (sections 201 through 231), provides for the regulation

of certain biological agents and toxins by the Department of Health and Human Services (HHS) (subtitle A, sections 201–204) and the Department of Agriculture (USDA) (subtitle B, sections 211–213), and provides for interagency coordination between the two Departments regarding overlap agents and toxins (subtitle C, section 221). For the HHS, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the USDA. CDC and APHIS list select agents and toxins in 42 CFR 73.3 and in 7 CFR 331.3 and 9 CFR 121.3, respectively. The Federal Bureau of Investigation's Criminal Justice Information Service (CJIS) conducts security risk assessments of all individuals and nongovernmental entities that request to possess, use, or transfer select agents and toxins.

The meeting announced here is an opportunity for the regulated community (*i.e.,* registered entity responsible officials, alternate responsible officials, and entity owners) and other interested individuals to obtain specific regulatory guidance and information on standards concerning biosafety and biosecurity issues related to the Federal Select Agent Program. CDC, APHIS, and CJIS representatives will be present at the meeting to address questions and concerns.

Updates on the current status of the APHIS and CDC proposed rule, general components of a personnel reliability program, pre-employment background screening, occupational health programs, BSL4 surety programs, and future responsible official training will be discussed, including panel discussions, by representatives from the Department of Homeland Security, CJIS, APHIS, CDC, and National Institutes of Health.

All attendees must register in advance. To register all persons must complete an online registration form at *http://www.selectagents.gov* and submit it by October 14, 2011. For those unable to attend in person, the workshop will be available over the Internet as a webcast.

Parking is available at the University Center for a $5 fee. Hotel information is available on the Internet at *http://www.selectagents.gov.*

If you require special accommodations, such as a sign language interpreter, please call or write one of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 3rd day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26071 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, and 90

[Docket No. APHIS–2009–0091]

RIN 0579–AD24

Traceability for Livestock Moving Interstate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before December 9, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2009–0091–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2009–0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2009–0091* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Program Manager, Animal Disease Traceability, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION: On August 11, 2011, we published in the **Federal Register** (76 FR 50082–50110, Docket No. APHIS–2009–0091) a proposal to establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate.

Comments on the proposed rule were required to be received on or before November 9, 2011. We are extending the comment period on Docket No. APHIS–2009–0091 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC this 3rd day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26056 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, 127

RIN 3245–AG23

Small Business Size and Status Integrity

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to amend its regulations to implement provisions of the Small Business Jobs Act of 2010 (Jobs Act) pertaining to small business size and status integrity. SBA is proposing to amend its program regulations to implement statutory provisions establishing that there is a presumption of loss equal to the value of the contract or other instrument when a concern willfully seeks and receives an award by misrepresentation. SBA is proposing to amend its program regulations to implement statutory provisions that provide that the submission of an offer or application for an award intended for small business concerns will be deemed a size or status certification or representation in certain circumstances. SBA is proposing to amend its program regulations to implement statutory provisions that provide that an authorized official must sign in connection with a size or status certification or representation for a

contract or other instrument. SBA is proposing to amend its regulations to implement statutory provisions that provide that concerns that fail to update their size or status in the Online Representations and Certifications Application (ORCA) database (or any successor thereto) at least annually shall no longer be identified in the database as small or some other socioeconomic status, until the representation is updated. Finally, SBA is proposing to amend its regulations to clarify when size is determined for purposes of entry into the 8(a) Business Development and HUBZone programs.

DATES: Comments must be received on or before November 7, 2011.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG23, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail, for paper, disk, or CD/ROM submissions: Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov,* please submit the information to Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor, Washington, DC 20416, or send an e-mail to *Dean.Koppel@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Office of Government Contracting, 409 Third Street SW., Washington, DC 20416; (202) 205–9751; *Dean.Koppel@sba.gov.*

SUPPLEMENTARY INFORMATION: On September 27, 2010, Congress amended the Small Business Act to provide that if a concern willfully seeks and receives an award by misrepresenting its small business size or other socioeconomic status, there is a presumption of loss to the United States equal to the value of the contract, subcontract, cooperative agreement, cooperative research and development agreement or grant. The Senate Report indicates that this presumption is "irrefutable." Senate Rep. No. 111–343, p. 8. The amendments also provide that certain actions, such as submitting an offer in response to a solicitation set aside for small business concerns, will be deemed a representation of small business size or status. The amendments require the signature of an authorized official of a concern making a small business size or status representation in connection with certain actions, such as submitting an offer. The amendments further provide that concerns must update their size and status certifications in ORCA at least annually, or the status will be lost until such time as the update is made. Finally, the amendments further provide that SBA must promulgate regulations to protect individuals and concerns from liability in cases of unintentional errors, technical malfunctions and other similar situations.

In accordance with 15 U.S.C. 632(w), SBA is proposing to amend its Size (121.108, 121.411), 8(a) (124.521), Small Disadvantaged Business (SDB) (124.1015), Service-Disabled Veteran-Owned (SDVO) (125.29), HUBZone (126.900) and Women-Owned Small Business (WOSB) (127.700) regulations to notify firms participating in those programs about the statutory presumption of loss provisions; the statutory deemed certification provisions; the statutory signature requirement in connection with offers; and the statutory limitation of liability provisions. In addition, SBA is proposing to amend its Size, SDB, SDVO, HUBZone and WOSB regulations to notify firms participating in these programs of the additional penalties for misrepresentations set forth in 15 U.S.C. § 645(d). SBA is not proposing to amend its 8(a) regulations to add this notice because 8(a) Participants are not mentioned in 15 U.S.C. 645(d).

In accordance with 15 U.S.C. 632(x), SBA is also proposing to amend its regulations to add provisions (121.109, 124.1016, 125.30, 127.701) requiring a firm to update its size, small disadvantaged business, service-disabled veteran-owned or women-owned small business status certification in federal databases at least annually, and to require that a firm that fails to certify its size or status within one year of a prior certification will no longer be listed as a firm of that size or status, until the firm recertifies its status in connection with the specific relevant size standard or eligibility requirements. SBA is not proposing to add such a requirement for purposes of the 8(a) BD or HUBZone programs, because the Small Business Administration is responsible for providing these certification designations in federal procurement databases.

SBA's regulations currently provide that a concern applying for certification into the 8(a) Business Development or HUBZone programs must be small for its primary industry at the time of application and "the date of certification by SBA." 13 CFR 121.404(b). If the SBA 8(a) or HUBZone program office believes that an applicant is other than small, the SBA program office requests a formal size determination from the relevant SBA Office Government Contracting Area Office. However, SBA will not certify a firm into these programs if it believes the firm is other than small. Consequently, an issue in administrative litigation has arisen concerning what date to use to determine the firm's size as of the "date of certification" into the program. Obviously, SBA does not want to certify a firm into one of the 8(a) or HUBZone programs in the firm is other than small for the work for which it is primarily engaged. Consequently, we are proposing to amend the size regulations to provide that for purposes of entry into these programs, a firm must be small at the date of application and the date the program office requests a formal size determination in connection with a firm that is otherwise eligible for program certification.

SBA is also proposing to update its size protest regulations to add additional methods for serving formal size determinations. The current regulation limits the notification method to certified mail, return receipt requested, or overnight delivery. In addition, SBA is proposing to remove the current requirement that SBA provide the formal size determination to all of the protested concern's affiliates, or alleged affiliates. A concern can have hundreds of affiliates or alleged affiliates, and it is impractical and costly to provide a decision to all of these entities.

Compliance With Executive Orders 12866, 13563, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. chapter 35), and the Regulatory Flexibility Act (5. U.S.C. 601–612)

Executive Orders 12866

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the

Congressional Review Act, 5 U.S.C. 80, *et seq.*

Regulatory Impact Analysis

1. *Is there a need for the regulatory action?* The proposed regulations would implement Sections 1341 and 1342 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act) which are codified at 15 U.S.C. 632(w), (x). Sections 1341 and 1342 of the Jobs Act require the Administrator to promulgate regulations implementing some of the provisions within one year of enactment.

2. *What are the potential benefits and costs of this regulatory action?* It is the declared statutory policy of the United States that small business concerns receive their fair proportion of government contracts, to spur creativity and innovation, increase employment and strengthen the industrial base. Several recent Government Accountability Office reports indicate that ineligible concerns may be receiving benefits to which they are not entitled. This in turn harms legitimate small business concerns that not only do not receive the contracts, but may be deprived of future contracting opportunities because of the attention garnered by these bad actors. The presumption of loss, deemed certification and signature requirement will make it easier to prosecute, seek damages or suspend or debar concerns and individuals that willfully misrepresent their size and socioeconomic status in order to gain a contract, subcontract, grant or cooperative agreement. The rule proposes to force concerns to update their size or status in federal procurement databases at least annually, or else the firms will lose their status in those databases. Standard contracting and grant forms will have to be amended to allow an authorized official to sign on the same page as the size or status that the firm is claiming. The Online Certification and Representation (ORCA) database will have to be programmed to automatically change the size or socioeconomic status of firms that fail to update their size or socioeconomic status at least annually. SBA believes that the potential costs associated with these changes, which are required by statute, are relatively minor and are significantly outweighed by the benefits to the integrity of small business procurement, grant and research programs and the intended beneficiaries.

3. *What are the alternatives to this final rule?* The proposed regulations are required to implement statutory provisions. The requirements are clear, and the Jobs Act requires promulgation of regulations implementing certain portions of the Jobs Act within one year.

Executive Order 13563

The proposed regulations implement important statutory provisions intended to prevent and deter fraud and misrepresentation in small business government contracting and other programs. SBA proposes to amend all applicable parts of its regulations to put participants in those programs on notice of the penalties associated with misrepresentation, and to the extent practicable, utilize identical language in each Part. SBA is also proposing to include in each part other relevant applicable statutory provisions concerning the penalties for misrepresentation. The costs associated with these proposed rules, requiring a signature in connection with a size or status representation and requiring concerns to update online certifications annually, are minimal and required by statute. As part of its implementation of this executive order and consistent with its commitment to public participation in the rulemaking process, SBA held public meetings in 13 locations around the country to discuss implementation of the Jobs Act, and received public input from thousands of small business owners, contracting officials and large business representatives.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of that Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various layers of government, as specified in the order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act, 44 U.S.C., Chapter 35

For the purpose of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has determined that this rule, if adopted in final form, would not impose new reporting requirements and would not require new recordkeeping requirements. In accordance with Federal Acquisition Regulation (FAR) §§ 4.1202, 52.204–8, 52.219–1 and 13 CFR 121.404(a), 121.411, concerns must submit paper or electronic representations or certifications in connection with prime contracts and subcontracts. The Jobs Act requires that each offeror or applicant for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. The Jobs Act mandates that an authorized official must sign the certification on the same page containing the size and status claimed by the concern. Offerors are already required to sign their offers, bids or quotes (Standard Forms 18, 30, 33, 1449), so this provision does not create new reporting or recordkeeping requirements.

Regulatory Flexibility Act

SBA has determined that this proposed rule, if adopted in final form, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, SBA has prepared an Initial Regulatory Flexibility Act (IRFA) analysis addressing the proposed regulation.

IRFA

When preparing a Regulatory Flexibility Analysis, an agency shall address all of the following: a description of why the action by the agency is being considered; the objectives and legal basis of the rule; the estimated number of small entities to which the rule may apply; a description of the projected reporting, recordkeeping and other compliance requirements; identification of all Federal rules which may duplicate, overlap or conflict with the proposed rule; and a description of significant alternatives which minimize any significant economic impact on small entities. This IRFA considers these points and the impact the proposed regulation concerning small business size and status integrity may have on small entities.

(a) Need for, Objectives, and Legal Basis of the Rule

The proposed regulatory amendments implement Sections 1341 and 1342 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act); 15 U.S.C. 632(w), (x). The purpose of the statute and implementing regulations is to prevent or deter firms from

misrepresenting their size or socioeconomic status.

(b) Estimate of the Number of Small Entities to Which the Rule May Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that may be affected by the proposed rules, if adopted. The RFA defines "small entity" to include "small businesses," "small organizations," and "small governmental jurisdictions." SBA's programs do not apply to "small organizations" or "small governmental jurisdictions" because they are non-profit or governmental entities and do not generally qualify as "business concerns" within the meaning of SBA's regulations. SBA's programs generally apply only to for-profit business concerns. Therefore, the proposed regulation will not impact small organizations or small governmental jurisdictions.

In fiscal year 2010, there were approximately 3.35 million small business contract actions. The proposed regulations concerning presumption of loss will only impact small business concerns that misrepresent their size or status in connection with a contract, subcontract, cooperative agreement, cooperative research and development agreement or grant in such a way that criminal prosecution or other action is taken by the Government. In fiscal year 2010, SBA found approximately 200 firms to be ineligible for a contract (14 HUBZone, 33 Service-Disabled Veteran-Owned, 151 size). Not all of these firms would be criminally prosecuted or have others actions taken against them. Thus, the proposed regulation concerning presumption of loss will impact very few concerns, and some of these concerns are not actually small.

There are approximately 348,000 concerns listed as small business concerns in the Dynamic Small Business Search (DSBS) database. The proposed regulations concerning deemed certifications and the requirement for a signature would apply to all of these concerns, to the extent the concerns submit an offer for a prime contract that is set aside for small business concerns. In addition, there are small business concerns that are not registered in the DSBS database that submit offers or responses for grants, subcontracts, and other agreements. The annual certification requirement would apply to all of the 348,000 firms registered in the DSBS database.

(c) Projected Reporting, Recordkeeping and Other Compliance Requirements

This proposed rule would not impose a new information collection, recordkeeping or compliance requirement on small businesses. A firm's size or socioeconomic status is generally based on records that it already possesses, such as payroll records and annual tax returns. Firms currently must represent their size or status in connection with contracts and subcontracts, either electronically or in paper form. FAR §§ 4.1202, 52.204–8, 52.219–1 and 13 CFR 121.404(a), 121.411. The proposed rule requires an authorized official to sign on the page containing a concern's size or status representation. Offerors are generally required to sign their offers (*e.g.,* Standard Forms 26, 33, 1447, 1449), so the burden on small business concerns to also sign their size or status representation or certification will be minimal.

(d) Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

Although firms registered in ORCA are supposed to update their certifications and representations on an annual basis (FAR § 4.1201(b)(1)), Section 1342 of the Jobs Act requires that firms that fail to meet the annual certification or representation requirement shall lose their status as small or some other socioeconomic category in the database until such time as the firm updates its size or socioeconomic status. The requirement to have an authorized official sign in connection with the firm's size or status will be implemented in the Federal Acquisition Regulation and will have to be harmonized with current ORCA requirements as well as electronic commerce and electronic signature rules. However, firms currently must sign offers in many cases (*e.g.,* Standard Forms 26, 33 1447, and 1449).

(e) Significant Alternatives to the Rule Which Could Minimize Impact on Small Entities

The proposed regulations implement Sections 1341 and 1342 of the Jobs Act. The proposed regulations are directed at small business concerns seeking government contracts, subcontracts, grants, and cooperative agreements. The proposed rules are intended to prevent or deter firms from misrepresenting their size or socioeconomic status. The impact on firms that accurately represent their size or status will be minimal. An authorized official will have to sign an offer where the firm represents its size and status, but authorized officials already have to sign offers. Firms will have to update their size and socioeconomic status in ORCA at least annually, but that is already required. FAR § 4.1201(b)(1). The proposed rule gives firms incentive to update their size or status in ORCA, and ensures that firms that do not update their size or status will no longer be listed as having small or socioeconomic status, unless or until the firms update their status.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Reporting and recordkeeping requirements, and Small Businesses.

13 CFR Part 124

Administrative practice and procedure, Minority businesses, Reporting and recordkeeping requirements, and Technical assistance.

13 CFR Part 125

Government contracts, Reporting and recordkeeping requirements, Small businesses, and Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements and Small businesses.

13 CFR Part 127

Government procurement, Reporting and recordkeeping requirements, and Small businesses.

For the reasons stated in the preamble, SBA proposes to amend parts 121, 124, 125, 126 and 127 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644 and 662(5); and Pub. L. 105–135, sec. 401 et. seq., 111 Stat. 2592.

2. Amend § 121.108 by revising section heading and adding paragraphs (a) through (e) to read as follows:

§ 121.108 What are the requirements for representing small business size status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise

classified as intended for award to small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the size status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of size was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing size representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation*

(1) *Suspension or debarment.* The SBA debarring official or the agency debarring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concern are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

3. Add new § 121.109 to read as follows:

§ 121.109 What Must a Concern do in order to be Identified as a Small Business Concern in any Federal procurement databases?

(a) In order to be identified as a small business concern in the Online Representations and Certifications Application (ORCA) database (or any successor thereto), a concern must certify its size in connection with specific size standards at least annually.

(b) If a firm identified as a small business concern in ORCA fails to certify its size within one year of a size certification, the firm will not be listed as a small business concern in ORCA, unless and until the firm recertifies its size.

4. Amend § 121.404(b) by removing "date of certification by SBA" and adding in its place "date the SBA program office requests a formal size determination in connection with a concern that is otherwise eligible for program certification."

5. Amend § 121.411 by adding new paragraphs (d), through (i) to read as follows:

§ 121.411 What are the size procedures for SBA's section 8(d) Subcontracting Program?

* * * * *

(d) Presumption of Loss Based on the Total Amount Expended. In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(e) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small business concern.

(f) Signature Requirement. Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the size status claimed by the concern.

(g) *Limitation of Liability.* Paragraphs (d)–(f) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of size was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing size representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid

representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(h) Additional Penalties for Misrepresentation.

(1) *Suspension or debarment.* The SBA debarring official or the agency debarring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concern are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

6. Amend § 121.1009 by revising paragraph (f) to read as follows:

§ 121.1009 What are the procedures for making size determinations?

* * * * *

(f) *Notification of determination.* SBA will promptly notify the contracting officer, the protester, and the protested concern. SBA will send the notification by verifiable means, which may include facsimile, electronic mail, or overnight delivery service.

* * * * *

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

7. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 632, 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d); and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 100–656, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

8. Add new § 124.521 to read as follows:

§ 124.521 What are the requirements for representing 8(a) status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to 8(a) Participants, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than an 8(a) Participant willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of 8(a) status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to 8(a) Participants.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to an 8(a) Participant.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as an 8(a) Participant.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the 8(a) status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the 8(a) status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of 8(a) status was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing 8(a) representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

9. Add new § 124.1015 to read as follows:

§ 124.1015 What are the requirements for representing small disadvantaged business status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small disadvantaged business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small disadvantaged business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small disadvantaged business status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small disadvantaged business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small disadvantaged business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small disadvantaged business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small disadvantaged business status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page

containing the small disadvantaged status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of size was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing SDB representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA debarring official or the agency debarring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small disadvantaged business status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

10. Add new § 124.1016 to read as follows:

§ 124.1016 What must a concern do in order to be Identified as a Small Disadvantaged Business Concern in any Federal procurement databases?

(a) In order to be identified as a small disadvantaged business concern in the Online Representations and Certifications Application (ORCA) database, (or any successor thereto) a concern must certify its small disadvantaged business status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as a small disadvantaged business concern in ORCA fails to certify its status within one year of a status certification, the firm will not be listed as a small disadvantaged business concern in ORCA, unless and until the firm recertifies its small disadvantaged business status.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

11. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637, 644 and 657f.

12. Amend § 125.29 by

a. Revising the section heading;

b. Revising paragraphs (a) through (c); and

c. Adding new paragraphs (d) through (e) to read as follows:

§ 125.29 What are the requirements for representing service-disabled veteran-owned small business status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to service-disabled veteran-owned small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a service-disabled veteran-owned small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of service-disabled veteran-owned small business status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to service-disabled veteran-owned small business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a service-disabled veteran-owned small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small disadvantaged business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the service-disabled veteran-owned small business status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the service-disabled veteran-owned small business status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)—(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of service-disabled veteran-owned small business status was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing SDVO SBC representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA debarring official or the agency debarring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the service-disabled veteran-owned status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns are subject to criminal penalties for knowingly making false statements or

misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

13. Add new § 125.30 to read as follows:

§ 125.30 What must a concern do in order to be identified as a Service-Disabled Veteran-Owned Small Business concern in any Federal procurement databases?

(a) In order to be identified as a Service-Disabled Veteran-Owned business concern in the Online Representations and Certifications Application (ORCA) database (or any successor thereto) a concern must certify its Service-Disabled Veteran-Owned small business status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as a Service-Disabled Veteran-Owned small business concern in ORCA fails to certify its status within one year of a status certification, the firm will not be listed as a Service-Disabled Veteran-Owned small business concern in ORCA, unless and until the firm recertifies its Service-Disabled Veteran-Owned status.

PART 126—HUBZONE PROGRAM

14. The authority citation for part 126 is revised to read as follows:

Authority: 15 U.S.C. 632 and 657(a).

15. Amend § 126.900 by:

a. Revising the section heading;

b. Revising paragraphs (a)–(c); and

c. Adding new paragraphs (d)–(e) to read as follows:

§ 126.900 What are the requirements for representing HUBZone status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to HUBZone small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a HUBZone small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of HUBZone small business status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to HUBZone small business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a HUBZone small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a HUBZone small business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the HUBZone small business status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the HUBZone status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of HUBZone status was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing HUBZone SBC representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation*

(1) *Suspension or debarment.* The SBA debarring official or the agency debarring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the HUBZone status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

PART 127—WOMEN–OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

16. The authority citation for part 127 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

17. Amend § 127.700 by:

a. Revising the section heading;

b. Revising paragraphs (a)–(c); and

c. Adding new paragraphs (d)–(e):

§ 127.700 What are the requirements for representing women-owned small business or economically disadvantaged women-owned small business status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to women-owned small business concerns or economically disadvantaged women-owned small business concerns, there shall be an irrefutable presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a women-owned small business concern or economically disadvantaged women-owned small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of women-owned small business or economically disadvantaged women-owned small business status:

(1) Submission of a bid or proposal for a Federal grant, contract, subcontract,

cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to women-owned small business concerns or economically disadvantaged women-owned small business concerns.

(2) Submission of a bid proposal for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a women-owned small business concern or economically disadvantaged women-owned small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a women-owned small business concern or economically disadvantaged women-owned small business concern.

(c) *Signature Requirement.* Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the women-owned small business or economically disadvantaged women-owned small business status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the women-owned small business or economically disadvantaged women-owned small business status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) shall not apply in the case of unintentional errors or technical malfunctions that demonstrate that a misrepresentation of women-owned small business or economically disadvantaged women-owned small business status was not affirmative, intentional or willful. Consideration shall be given to the firm's internal management procedures governing WOSB representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. In no case shall an individual or firm be liable for erroneous representations or certifications made by Government personnel.

(e) *Additional Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA debarring official or the agency debarring official may suspend or debar a person or concern for misrepresentation pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the women-owned status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concern are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

18. Add new § 127.701 to read as follows:

§ 127.701 What must a concern do in order to be identified as a Women-Owned Small Business concern in any Federal procurement databases?

(a) In order to be identified as a Women-Owned business concern in the Online Representations and Certifications Application (ORCA) database (or any successor thereto) a concern must certify its Women-Owned small business status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as a Women-Owned small business concern in ORCA fails to certify its status within one year of a status certification, the firm will not be listed as a Women-Owned small business concern in ORCA, unless and until the firm recertifies its Women-Owned status.

Dated: September 26, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–25656 Filed 10–6–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1204; Directorate Identifier 2010–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Aviation Communication & Surveillance Systems (ACSS) Traffic Alert and Collision Avoidance System (TCAS) Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Aviation Communication & Surveillance Systems (ACSS) traffic alert and collision avoidance system (TCAS) units installed on but not limited to various transport and small airplanes. That NPRM proposed to require upgrading software. That NPRM was prompted by reports of anomalies with TCAS units during a flight test over a high density airport. The TCAS units dropped several reduced surveillance aircraft tracks because of interference limiting. This action revises that NPRM by proposing to require new updated software for certain TCAS units. We are proposing this supplemental NPRM to correct the unsafe condition on these products. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by November 7, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, 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 service information identified in this AD, contact Aviation Communication & Surveillance Systems, LLC, 19810 North 7th Avenue, Phoenix, Arizona 85027–4741; phone: 623–445–7040; fax: 623–445–7004; e-mail: *acss.orderadmin@L–3com.com;* Internet: *http://www.acss.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5351; fax: 562–627–5210; e-mail: *abby.malmir@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1204; Directorate Identifier 2010–NM–147–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to Aviation Communication & Surveillance Systems (ACSS) traffic alert and collision avoidance system (TCAS) units with part numbers identified in ACSS Technical Newsletter 8008359, Revision A, dated January 12, 2011, as installed on but not limited to various transport and small airplanes, certificated in any category. That NPRM was published in the **Federal Register** on December 28, 2010 (75 FR 81512). That NPRM proposed to require upgrading software.

That NPRM was prompted by reports of anomalies with TCAS units during a flight test over high density airports (Chicago, New York, and Atlanta). The TCAS units dropped several reduced surveillance aircraft tracks because of interference limiting. This action revises that NPRM by proposing to require new updated software for certain TCAS units. We are proposing this supplemental NPRM to correct the unsafe condition on some of these products (the TCAS II, TCAS 2000, and T2CAS) that have an issue on some installations on which the TCAS unit reverts to the standby (STBY) mode (TCAS OFF) when the active transponder senses an altitude mis-compare between two Gilham altitude input or other possible air data source failure. This potential safety issue is dependent on the altitude interface to the transponder and the transponder used.

Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM, we have determined that certain software referenced in the original NPRM may not adequately address the unsafe condition for certain affected airplanes. ACSS has revised the associated service bulletins, as described below under "Request to Delay AD Pending TCAS Validation." We are issuing this supplemental NPRM to propose installing the new upgraded software via the revised versions of these service bulletins. The revised service bulletins provide instructions on how to accomplish the software upgrade; the specific software approvals, however, are still pending and are expected to be complete before the final rule is issued.

Comments

We gave the public the opportunity to comment on the previous NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for NPRM

Boeing concurred with the contents of the original NPRM.

Requests To Withdraw NPRM

ACSS disagreed with certain information in the Discussion section of the original NPRM.

The Discussion section stated that anomalies with ACSS TCAS units "occurred during a flight test over a high density airport." ACSS stated that it provided the initial report of the anomaly to the FAA in late 2009, and that the FAA reproduced that scenario during another flight test in early 2010. ACSS noted, however, that in over 35 million flight hours of ACSS TCAS systems in field operation, no operator has ever reported to ACSS any such anomaly being observed. Moreover, ACSS is not aware of any such reports having been provided to the FAA. ACSS concludes that the probability of such an event is low enough that an AD to address the potential situation is unnecessary.

The Discussion section of the original NPRM also stated that dropped tracks by the TCAS units could lead to "possible loss of separation of air traffic and possible mid-air collision." ACSS noted that the calculated probability associated with such a possible event is very low. To support this assertion, ACSS referred to Section 2.3 of ACSS Continuing Operational Safety Probability Assessment of the Interference Limiting Function, Document 8008352–001, Revision C, dated January 6, 2011. ACSS reported that it has never received any report of such an operational anomaly from field operation. ACSS added that this analysis would indicate that the probability of such an event is low enough that an AD to address the potential situation is unnecessary.

We infer that the commenter is requesting that we withdraw the NPRM. We disagree. While the commenter claims that the probability is low, information gathered from several flight tests at different regional airports, analysis of flight and other testing data, and various meetings and discussions among various FAA offices, ACSS, and an FAA TCAS contractor indicate that the risk from the identified condition is unacceptable, and it is necessary to proceed with this action.

Request To Delay AD Pending TCAS Validation

Dassault Aviation (Dassault) stated that the technical standard order (TSO)

for TCAS 2000, new part number (P/N) 7517900–55001 (referenced in corresponding ACSS Service Bulletin 8008229–001 (ATA Service Bulletin 7517900–34–6040), Revision 01, dated September 30, 2010), has been approved, but the TSO for TCAS 3000, new P/N 9003000–55004 (corresponding ACSS Service Bulletin 8008235–001 (ATA Service Bulletin 9003000–34–6006), Revision 02, dated February 3, 2011), was scheduled to be approved in June 2011. Dassault reports that, as an airplane manufacturer and system integrator, it must certify those TCAS units against airworthiness requirements and ensure that modified units still operate properly within their target system environment. Dassault proposed that we wait to issue the final rule until the new TCAS units can be validated within their hosting avionics environment.

We agree, for the reasons provided by the commenter. We have reviewed the following revised service bulletins:

- ACSS Service Bulletin 8008221–001 (ATA Service Bulletin 9003500–34–6014), Revision 01, dated February 4, 2011.
- ACSS Service Bulletin 8008222–001 (ATA Service Bulletin 9003500–34–6015), Revision 01, dated February 4, 2011.
- ACSS Service Bulletin 8008223–001 (ATA Service Bulletin 9003500–34–6016), Revision 01, dated February 4, 2011.
- ACSS Service Bulletin 8008229–001 (ATA Service Bulletin 7517900–34–6040), Revision 02, dated June 28, 2011.
- ACSS Service Bulletin 8008230–001 (ATA Service Bulletin 4066010–34–6036), Revision 02, dated June 28, 2011.
- ACSS Service Bulletin 8008231–001 (ATA Service Bulletin 7517900–34–6041), Revision 02, dated June 28, 2011.
- ACSS Service Bulletin 8008233–001 (ATA Service Bulletin 9000000–34–6016), Revision 03, dated June 30, 2011.
- ACSS Service Bulletin 8008234–001 (ATA Service Bulletin 9000000–34–6017), Revision 02, dated June 30, 2011.
- ACSS Service Bulletin 8008235–001 (ATA Service Bulletin 9003000–34–6006), Revision 02, dated February 3, 2011.
- ACSS Service Bulletin 8008236–001 (ATA Service Bulletin 7517900–34–6042), Revision 03, dated June 30, 2011.
- ACSS Service Bulletin 8008238–001 (ATA Service Bulletin 9000000–34–6018), Revision 02, dated June 30, 2011.

These revisions provide procedures for installing new updated software. We have revised this supplemental NPRM to refer to the most recent service information, and provided credit for actions done before the effective date of the AD using previous service information as acceptable for compliance with the AD requirements.

Request To Clarify Applicability

Several commenters reported difficulty determining the applicability of the original NPRM.

David Schober stated that the applicability of the original NPRM is defined in service bulletins that are not available to the general public, so some readers might not be able to determine which airplanes or components are affected. Mr. Schober added that a mechanic or repair station that does not have access to the service bulletins could return a noncompliant airplane to service.

The European Aviation Safety Agency (EASA) requested that we revise the original NPRM to specify the affected part numbers or software version.

ACSS noted that the applicability of the original NPRM did not identify specific TCAS part numbers associated with the referenced service bulletins. ACSS accordingly issued ACSS Technical Newsletter 8008359, which cross-references the service bulletins and specific TCAS part numbers. ACSS recommended that we revise the original NPRM to refer to this document.

We agree with the request. This supplemental NPRM includes the information in table 1 of ACSS Technical Newsletter 8008359, Revision A, dated January 12, 2011, which provides additional information about affected TCAS part numbers. Following paragraph (c) of this supplemental NPRM, we have added new Note 1, which introduces new table 1 to list the service information and the corresponding affected parts.

Request To Explain Effect of Revised Service Information on Applicability

Mr. Schober expressed concern for the potential effect on the applicability if the referenced service information is revised. Mr. Schober asserted that revising the service information to include additional units not considered at this time would bypass the public comment required by the Administrative Procedure Act (APA) (Pub. L. 79–404, 5 U.S.C. 551, *et seq.*).

We agree to clarify the applicability of this supplemental NPRM. Where an AD refers to a service document for airplanes or components in the applicability, that service bulletin is specifically identified by its revision level. Only that revision level may be used to determine the applicability of the AD. Therefore, since the applicability of the AD cannot change in the future except by revising or superseding the AD, this supplemental NPRM does not violate the APA. We have not changed the supplemental NPRM regarding this issue.

Request To Provide Additional Information

ACSS asserts that the information provided under the Summary and Discussion sections in the original NPRM provides very limited detail regarding the interference limiting issue. To help operators fully understand and assess the operational aspects of the interference limiting issue, ACSS recommended that we provide ACSS Technical Newsletter 8008359, "Change 7 Interference Limiting Airworthiness Directive FAQs," Revision A, dated January 12, 2011.

We agree. As explained previously, we have changed paragraph (c) in this supplemental NPRM to refer to this technical newsletter, which will be submitted to the Office of the Federal Register for approval of incorporation by reference in the final rule AD.

Request To Delay AD Issuance

Empire Airlines (Empire) reported it could not respond to the original NPRM because the necessary information was not available and the proposed modification had not been submitted for TSO approval yet. Empire suggested that we issue the NPRM when more information is available.

We disagree with the request. As noted previously in "Actions Since Previous NPRM was Issued," ACSS is upgrading the software of each TCAS model and submitting it one at a time to the FAA for review and approval. We anticipate that all necessary software will be FAA approved and released before we issue the final rule. In proposing the compliance time of 48 months in the NPRM, we anticipated that the software would be released within the first year after the final rule was issued. Therefore, the compliance time proposed in the NPRM has been reduced from 48 months to 36 months in this supplemental NPRM.

Request To Consider Effect of TCAS Certification

Dassault showed concern about the detrimental effect the original NPRM will have on the airplane delivery process for aircraft manufacturers around the world. Dassault reported that on the production line many airplanes equipped with the old TCAS part numbers are awaiting completion and final delivery. As a result, Dassault will be unable to issue a statement of

conformity (per FAA Order 8130.2G, Airworthiness Certification of Aircraft and Related Products, dated August 31, 2010) or a certificate of airworthiness (per EASA regulations) on these airplanes. Dassault requested relief in the form of two options: (1) Delaying issuance of the final rule for 12 months until ACSS can upgrade affected TCAS units currently installed so that Dassault can certify the interference limiting change and retrofit the equipment, or (2) excluding TCAS 3000 old part numbers currently on Dassault Falcon Jet and Dassault Aviation completion/production lines that are waiting entry into service so that, once in the field, the equipment would be in compliance with the AD.

We disagree that further revision of this supplemental NPRM is necessary. As stated previously, we anticipate that all necessary software will be approved and released before we issue the final rule. Therefore, Dassault will be able to install the required software in each airplane delivered after this AD's effective date and issue statements of conformity for those airplanes.

Request To Clarify Effect of the Supplemental Type Certificate (STC) on Applicability

Mr. Schober stated that many affected TCAS units use an STC as the approved data, and most of those STCs identify equipment eligible for installation by part number. The commenter asserted that the referenced service information rolls the part numbers of the units, so those units would no longer be eligible for installation via the original STC.

We agree to provide clarification. As indicated previously, we have added new table 1 in this supplemental NPRM to match each affected part number to its corresponding service document.

Request To Correct Statement of Unsafe Condition

ACSS noted an inaccuracy in the following text from the NPRM Summary section:

> The TCAS units dropped several reduced surveillance aircraft tracks because of interference limiting. We are proposing this AD to prevent TCAS units from dropping tracks, which could compromise separation of air traffic and lead to subsequent mid-air collisions.

ACSS stated that the IL function—even the changed implementation approved by the FAA and proposed by the NPRM—will still result in dropped tracks, because that is the purpose of the IL function. ACSS agreed with the Relevant Service Information section of the NPRM, which stated that the change simply "improves tracking." The commenter therefore suggested that we revise the NPRM to state that the AD will "minimize" rather than prevent dropped tracks.

We disagree. The current ACSS implementation of TCAS is susceptible to dropping surveillance aircraft tracks because of interference limiting. This supplemental NPRM would require revising the current TCAS software to prevent dropping of TA and potential RA tracking cause by interference limiting.We have not changed this supplemental NPRM regarding this issue. The supplemental NPRM also corrects the altitude source issue in some of the ACSS TCAS product installations.

Request for Information on the Incident

J. Twombly asked whether the ACSS anomaly that prompted the NPRM had any effect on the operation of the aircraft's transponder, or whether the transponder continued to operate in a normal manner, broadcasting and responding to interrogations, notwithstanding the ACSS anomaly. The commenter further questioned whether the transponder performance was verified during the investigation.

The Mode S transponder of the airplane was verified to be performing in normal status operation during the flight test, despite the TCAS operational issue of the interference limiting anomaly. This anomaly in TCAS has no effect on Mode S transponder operation. We have made no change to this supplemental NPRM in this regard.

Request To Revise FAA's Determination

ACSS requested that we revise the following sentence from the "FAA's Determination and Requirements of This Proposed AD" section of the original NPRM:

> We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

ACSS clarified that the operation of the IL function in question was not the result of an error in implementation. The IL function was specifically implemented to operate as it does in order to comply with the requirements of the TSO MOPS for Change 7 (*i.e.,* TSO–C119b), as ACSS interpreted those requirements. As such, ACSS considered the NPRM misleading in its statement that the unsafe condition was likely to exist or develop in "other products of these same type designs." ACSS had already implemented the FAA-directed change in all current and future versions (*e.g.,* TSO–C119c; Change 7.1-compliant systems). ACSS recommended that we revise the statement to indicate that the unsafe condition "exists in various ACSS TCAS systems."

We disagree with the request. We have determined that the identified unsafe condition exists in the affected TCAS products, and might develop in products with the same type design, unless the actions proposed in this supplemental NPRM are done. We have not changed the supplemental NPRM regarding this issue.

Request To Revise Certain Assertions Made in Original NPRM

ACSS questioned the accuracy of the following statement from the Discussion section of the NPRM: "When the TCAS unit interrogated aircraft in a high density airport area, some of the targets disappeared from the cockpit display or were not recognized." ACSS asserted that this claim is incorrect, and added that the TCAS system continues to monitor the airspace and receive Mode S squitter information from all aircraft within detection range, even when the interrogation power is being limited by the IL function. ACSS therefore suggested that we revise the statement to remove the words "or were not recognized."

Although the Discussion section from an NPRM is not repeated in a supplemental NPRM, we agree to provide clarification. The statement quoted by the commenter appears to be taken out of context from a more complete document. As long as information is within detection range and is being processed, MODE S recognition exists. But when tracking power is not available as a result of IL, not only will tracks disappear from the display, those targets will not be tracked because the lack of power does not permit maintenance of tracks. Therefore the tracks are dropped and will not be recognized and may result in loss of separation of own aircraft with other target aircraft. We have not changed the supplemental NPRM regarding this issue.

Request To Revise Proposed Cost Estimate

Mr. Schober noted that the Costs of Compliance section of the original NPRM considered only the actual updating of the unit—not the time to remove the unit, package and ship the unit to a repair station, return the unit to the aircraft owner, and re-install the unit, or the down time for the airplane for this maintenance evolution and the associated lost revenue.

Empire asserted that it would be necessary to read each ACSS service

document listed in the original NPRM to determine the applicability, and wondered whether we included this research time in our calculations for determining the financial impact of the original NPRM.

We infer that the commenters want us to revise the estimated costs to account for those variables. We disagree. The cost information in this supplemental NPRM describes only the direct costs of the specific required actions. Based on the best data available, the manufacturer provided the number of work-hours necessary to do the proposed actions. This number represents the time necessary to perform only the actions actually proposed by this supplemental NPRM. We recognize that, in doing actions required by an AD, operators might incur incidental costs in addition to the direct costs. But the cost analysis in AD rulemaking actions typically does not include incidental costs such as the time necessary for planning, airplane down time, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. We have not changed the supplemental NPRM regarding this issue.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist in other products of these same type designs. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require upgrading software.

Costs of Compliance

We estimate that this proposed AD affects 9,000 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Software upgrade	2 work-hours × $85 per hour = $170	$2,870	$3,040	$27,360,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Aviation Communication & Surveillance Systems, LLC: Docket No. FAA–2010–1204; Directorate Identifier 2010–NM–147–AD.

(a) Comments Due Date

We must receive comments by November 7, 2011.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Aviation Communication & Surveillance Systems (ACSS) traffic alert and collision avoidance system (TCAS) units with part numbers identified in ACSS Technical Newsletter 8008359, as installed on but not limited to various transport and small airplanes, certificated in any category.

Note 1: Table 1 of this AD also provides a cross-referenced list of part numbers with associated service bulletins to help operators identify affected parts.

TABLE 1—SERVICE BULLETIN AND LRU CROSS-REFERENCE

ACCS product—	Affected LRU part Nos. (P/Ns)—	ACSS Service Bulletin—
TCAS 3000SP	9003500–10900, –10901, –10902, –55900, –55901, –55902, –57901, –65900, –65901, –65902.	8008221–001, Revision 01, dated February 4, 2011 (ATA Service Bulletin 9003500–34–6014).

TABLE 1—SERVICE BULLETIN AND LRU CROSS-REFERENCE—Continued

ACCS product—	Affected LRU part Nos. (P/Ns)—	ACSS Service Bulletin—
TCAS 3000SP	9003500–10001, –10002, –10003, –10004, –55001, –55002, –55003, –55004, –65001, –65002, –65003, –65004.	8008222–001, Revision 01, dated February 4, 2011 (ATA Service Bulletin 9003500–34–6015).
TCAS 3000SP	9003500–10802	8008223–001, Revision 01, dated February 4, 2011 (ATA Service Bulletin 9003500–34–6016.
TCAS 2000	7517900–10003, –10004, –10006, –10007, –10011, –55003, –55004, –55006, –55007, –55009, –55011, –71003, –71004, –71006, –71007, –71011.	8008229–001, Revision 02, dated June 28, 2011 (ATA Service Bulletin 7517900–34–6040).
TCAS II	4066010–910, –912	8008230–001, Revision 02, dated June 28, 2011 (ATA Service Bulletin 4066010–34–6036).
Military TCAS 2000	7517900–56101, –56102, –56104, –56105, 56107	8008231–001, Revision 02, dated June 28, 2011 (ATA Service Bulletin 7517900–34–6041).
T2CAS	9000000–10002, –10003, –10004, –10005, –10006, –10008, –10204, –10205, –10206, –10208, –20002, –20003, –20004, –20005, –20006, –20008, –20204, –20205, –20206, –20208, –55002, –55003, –55004, –55005, –55006, –55008, –55204, –55205, –55206, –55208.	8008233–001, Revision 03, dated June 30, 2011 (ATA Service Bulletin 9000000–34–6016).
T2CAS	9000000–10110, –11111	8008234–001, Revision 02, dated June 30, 2011 (ATA Service Bulletin 9000000–34–6017).
TCAS 3000	9003000–10001, –10002, –10003, –55001, –55002, –55003, –65001, –65002, –65003.	8008235–001, Revision 02, dated February 3, 2011 (ATA Service Bulletin 9003000–34–6006).
Military TCAS 2000 MASS	7517900–20001, –20002, –65001, –65002	8008236–001, Revision 03, dated June 30, 2011 (ATA Service Bulletin 7517900–34–6042).
Military T2CAS MASS	9000000–30006, –40006, –60006	8008238–001, Revision 02, dated June 30, 2011 (ATA Service Bulletin 9000000–34–6018).

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by reports of anomalies with TCAS units during a flight test over a high density airport. The TCAS units dropped several reduced surveillance aircraft tracks because of interference limiting. We are issuing this AD to prevent TCAS units from dropping tracks, which could compromise separation of air traffic and lead to subsequent mid–air collisions.

(f) Compliance

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

(g) Upgrade Software

Within 36 months after the effective date of this AD, upgrade software for the ACSS TCAS, in accordance with the Accomplishment Instructions of the applicable ACSS publication identified in table 1 of this AD.

Note 2: ACSS Service Bulletin 8008233–001 (ATA Service Bulletin 9000000–34–6016), Revision 03, dated June 30, 2011, contains three part numbers (P/Ns 9000000–10007, –20007, and –55007) that were never produced.

(h) Actions Done in Accordance With Previous Service Information

A software upgrade done before the effective date of this AD in accordance with the applicable service bulletin identified in paragraphs (h)(1) through (h)(13) of this AD is acceptable for compliance with the requirements of paragraph (g) of this AD.

(1) ACSS Service Bulletin 8008221–001 (ATA Service Bulletin 9003500–34–6014), dated May 27, 2010.

(2) ACSS Service Bulletin 8008222–001 (ATA Service Bulletin 9003500–34–6015), dated May 27, 2010.

(3) ACSS Service Bulletin 8008223–001 (ATA Service Bulletin 9003500–34–6016), dated May 27, 2010.

(4) ACSS Service Bulletin 8008229–001 (ATA Service Bulletin 7517900–34–6040), Revision 01, dated September 30, 2010.

(5) ACSS Service Bulletin 8008230–001 (ATA Service Bulletin 4066010–34–6036), Revision 01, dated February 1, 2011.

(6) ACSS Service Bulletin 8008231–001 (ATA Service Bulletin 7517900–34–6041), Revision 01, dated October 15, 2010.

(7) ACSS Service Bulletin 8008233–001 (ATA Service Bulletin 9000000–34–6016), Revision 02, dated February 1, 2011.

(8) ACSS Service Bulletin 8008234–001 (ATA Service Bulletin 9000000–34–6017), Revision 01, dated February 1, 2011.

(9) ACSS Service Bulletin 8008235–001 (ATA Service Bulletin 9003000–34–6006), dated June 4, 2010.

(10) ACSS Service Bulletin 8008236–001 (ATA Service Bulletin 7517900–34–6042), dated May 27, 2010.

(11) ACSS Service Bulletin 8008236–001 (ATA Service Bulletin 7517900–34–6042), Revision 02, dated February 1, 2011.

(12) ACSS Service Bulletin 8008238–001 (ATA Service Bulletin 9000000–34–6018), dated June 4, 2010.

(13) ACSS Service Bulletin 8008238–001 (ATA Service Bulletin 9000000–34–6018), Revision 01, dated February 1, 2011.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(j) Related Information

(1) For more information about this AD, contact Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5351; fax: 562–627–5210; e-mail: *abby.malmir@faa.gov.*

(2) For service information identified in this AD, contact Aviation Communication & Surveillance Systems, LLC, 19810 North 7th Avenue, Phoenix, Arizona 85027–4741; phone: 623–445–7040; fax: 623–445–7004; e-mail: *acss.orderadmin@L–3com.com;* Internet: *http://www.acss.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26084 Filed 10–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125949–10]

RIN 1545–BJ64

Retail Inventory Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the retail inventory method of accounting. The regulations restate and clarify the computation of ending inventory values under the retail inventory method and provide a special rule for certain taxpayers that receive margin protection payments and similar vendor allowances. The regulations affect taxpayers that are retailers and elect to use a retail inventory method.

DATES: Written or electronically generated comments and requests for a public hearing must be received by January 5, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–125949–10), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–125949–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–125949–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Natasha M. Mulleneaux, (202) 622–3967; concerning submission of comments and requests for a public hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 relating to the retail inventory method under § 1.471–8 of the Income Tax Regulations.

Section 471 provides that a taxpayer's method of accounting for inventories must clearly reflect income. Section 1.471–2(c) provides that the bases of inventory valuation most commonly used and meeting the requirements of section 471 are (1) cost and (2) cost or market, whichever is lower (LCM). Section 1.471–8 allows retailers to approximate cost or LCM by using the retail inventory method. A last-in, first out (LIFO) taxpayer that elects to use the retail inventory method must approximate cost.

Under the retail inventory method, the retail selling price of ending inventory is converted to approximate cost or approximate LCM using a cost-to-retail ratio, or cost complement. The numerator of the cost complement is the value of beginning inventory plus the cost of purchases during the taxable year, and the denominator is the retail selling prices of beginning inventories plus the initial retail selling prices of purchases. The cost complement is then multiplied by the retail selling price of ending inventory (multiplicand) to determine the ending inventory value.

Section 1.471–3 provides that, for inventory valuation purposes, the cost of purchases during the year generally includes invoice price less trade or other discounts. A discount may be based on a retailer's sales volume (sales-based allowance) or on the quantity of merchandise a retailer purchases (volume-based allowance), or may relate to a retailer's reduction in retail selling price (markdown allowance or margin protection payment). A vendor may provide a retailer with a markdown allowance or margin protection payment when the retailer temporarily or permanently reduces the retail selling price of its inventory to sell it. A markdown allowance or margin protection payment differs from other types of discounts because it is intended to maintain the retailer's profit margin and therefore is directly related to the inventory selling price.

Under proposed § 1.471–3(e) (75 FR 78944), the amount of an allowance, discount, or price rebate a taxpayer earns by selling specific merchandise (a sales-based vendor allowance) is a reduction in the cost of the merchandise sold and does not reduce the inventory cost or value of goods on hand at the end of the taxable year.

Explanation of Provisions

1. Overview

The proposed regulations restructure and restate the regulations under § 1.471–8 in plain language. The proposed regulations also add rules addressing the treatment of sales-based vendor allowances and of vendor markdown allowances and margin protection payments in the retail inventory method computation.

2. Sales-Based Vendor Allowances

The proposed regulations clarify the interaction of proposed § 1.471–3(e) with the retail inventory method by excluding from the numerator of the cost complement formula the amount of a sales-based vendor allowance.

3. Computation of Cost Complement Under the Retail LCM Method

The retail inventory method determines an ending inventory value by maintaining proportionality between costs and selling prices. Under the retail LCM method, a reduction in retail selling price reduces the value of ending inventory in the same ratio as the cost complement.

If a taxpayer earns an allowance, discount, or price rebate, the inventory cost in the numerator of the cost complement declines, resulting in a reduction of ending inventory value computed under the retail inventory method. If the allowance, discount, or price rebate is related to a permanent markdown of the retail selling price (as in the case of a markdown allowance or margin protection payment), ending inventory value is further reduced as a result of the decrease in ending retail selling prices (the multiplicand in the formula). This additional reduction of ending inventory value caused by reducing both the numerator of the cost complement and the multiplicand (1) Generally results in a lower ending inventory value for a retail LCM method taxpayer than for a similarly situated first-in, first-out (FIFO) taxpayer that values inventory at LCM, and (2) does not clearly reflect income.

To address this distortion, the proposed regulations provide that a retail LCM method taxpayer may not reduce the numerator of the cost complement for an allowance, discount, or price rebate that is related to or intended to compensate for a permanent markdown of retail selling prices. Thus, in the case of markdown allowances and margin protection payments, the value of ending inventory as computed under the retail LCM method is reduced solely as a result of the reduction in retail selling price, avoiding an unwarranted

additional reduction in inventory value for a single markdown allowance and more reasonably approximating LCM.

As an alternative to this proposed modification, the retail inventory method could achieve the same result by permitting taxpayers to reduce the numerator of the cost complement for all non-sales based allowances, discounts, or price rebates, including markdown allowances, but requiring a reduction of the denominator of the cost complement for all permanent markdowns related to markdown allowances. Comments are specifically requested on whether the final regulations should provide this or other alternative retail LCM methods.

4. Temporary Price Adjustments

The proposed regulations clarify that under the retail inventory method taxpayers do not adjust the cost complement or ending retail selling prices for temporary markdowns and markups.

Effective/Applicability Date

These regulations are proposed to apply for taxable years beginning after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS. Comments may be submitted electronically or via a signed original with eight (8) copies. Comments are requested on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Natasha M. Mulleneaux of the Office of the Associate Chief Counsel (Income Tax & Accounting). Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.471–8 is revised to read as follows:

§ 1.471–8 Inventories of retail merchants.

(a) *In general.* A taxpayer that is a retail merchant may use the retail inventory method of accounting described in this section. The retail inventory method uses a formula to convert the retail selling price of ending inventory to an approximation of cost (retail cost method) or an approximation of lower of cost or market (retail LCM method). A taxpayer may use the retail inventory method instead of valuing inventory at cost under § 1.471–3 or lower of cost or market under § 1.471–4.

(b) *Computation*—(1) *In general.* A taxpayer computes the value of ending inventory under the retail inventory method by multiplying a cost complement by the retail selling prices of the goods on hand at the end of the taxable year.

(2) *Cost complement*—(i) *In general.* The cost complement is a ratio computed as follows—

(A) The numerator is the value of beginning inventory plus the cost of goods purchased during the taxable year; and

(B) The denominator is the retail selling prices of beginning inventory plus the retail selling prices of goods purchased during the year (that is, the bona fide retail selling prices of the items at the time acquired), adjusted for all permanent markups and markdowns, including markup and markdown cancellations and corrections. The denominator is not adjusted for temporary markups or markdowns.

(ii) *Sales-based vendor allowances.* A taxpayer may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate a taxpayer earns by selling specific merchandise.

(iii) *Special rules for cost complement for retail LCM method*—(A) *Margin protection payments and similar allowances.* A taxpayer using the retail inventory method to approximate LCM may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate that is related to or intended to compensate for a permanent reduction in the taxpayer's retail selling price of inventory (for example, a margin protection payment or markdown allowance).

(B) *Exclusion of markdowns in denominator.* A taxpayer using the retail inventory method to approximate LCM excludes markdowns (and markdown cancellations or corrections) from the denominator of the cost complement. Any markups must be reduced by the markdowns made to cancel or correct them.

(3) *Ending inventory retail selling prices.* A taxpayer must include all permanent markups and markdowns but may not include temporary markups or markdowns in determining the retail selling prices of goods on hand at the end of the taxable year. A taxpayer may not include a markdown that is not an actual reduction of retail selling price.

(c) *Special rules for LIFO taxpayers.* A taxpayer using the last-in, first-out (LIFO) inventory method with the retail inventory method uses the retail inventory method to approximate cost. See § 1.472–1(k) for additional adjustments for a taxpayer using the LIFO inventory method with the retail cost method.

(d) *Scope of retail inventory method.* A taxpayer may use the retail inventory method to value ending inventory for a department, a class of goods, or a stock-keeping unit. A taxpayer maintaining more than one department or dealing in classes of goods with different percentages of gross profit must compute cost complements separately for each department or class of goods.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) R, a retail merchant who uses the retail method to approximate LCM, has no beginning inventory in 2010. R purchases 40 tables during 2010 for $60 each for a total of $2,400. R offers the tables for

sale at $100 each for an aggregate retail selling price of $4,000. R does not sell any tables at a price of $100, so R permanently marks down the retail selling price of its tables to $90 each. As a result of the $10 markdown, R's supplier provides R a $6 per table margin protection payment. R sells 25 tables during 2010 and has 15 tables in ending inventory at the end of 2010.

(ii) Under paragraph (b)(2)(i)(A) of this section, the numerator of the cost complement is the aggregate cost of the tables. Under paragraph (b)(2)(iii)(A) of this section, R may not reduce the numerator of the cost complement by the amount of the margin protection payment. Under paragraph (b)(2)(i)(B) of this section, the denominator of the cost complement is the aggregate of the bona fide retail selling prices of all the tables at the time acquired. Under paragraph (b)(2)(iii)(B) of this section, R excludes the markdown from the denominator of the cost complement. Therefore, R's cost complement is $2,400/$4,000, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the permanent markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending table inventory is $1,350 (15 * $90). Approximating LCM under the retail method, the value of R's ending table inventory is $810 (60 percent * $1,350).

Example 2. (i) The facts are the same as in *Example 1,* except that R permanently reduces the retail selling price of all 40 tables to $50 per unit and the 15 tables on hand at the end of the year are marked for sale at that price. In contrast to the $10 markdown, the additional $40 markdown is unrelated to a margin protection payment or other allowance.

(ii) Under paragraph (b)(2)(iii)(B) of this section, R excludes the markdowns from the denominator of the cost complement. Therefore, R's cost complement is $2,400/$4,000, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the markdowns in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending inventory is $750 (15 * $50). Approximating LCM under the retail method, the value of R's ending inventory is $450 (60 percent * $750).

Example 3. (i) The facts are the same as in *Example 1,* except that R uses the LIFO inventory method. R must value inventories at cost and, under paragraph (c) of this section, uses the retail method to approximate cost.

(ii) Under paragraph (b)(2)(i)(A) of this section, R reduces the numerator of the cost complement by the amount of the margin protection payment. Under paragraph (b)(2)(i)(B) of this section, R includes the markdown in the denominator of the cost complement. Therefore, R's cost complement is $2,160/$3,600, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending inventory is $1,350 (15 * $90). Approximating cost under the retail method, the value of R's ending inventory is $810 (60 percent * $1,350).

(f) *Effective/applicability date.* This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–25946 Filed 10–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1101]

Proposed Flood Elevation Determinations

Correction

In proposed rule document 2011–19545 appearing on pages 46715–46716 in the issue of August 3, 2011, make the following correction:

In the proposed rule document 2011–19545, the table appearing on pages 46715–46716 was printed incorrectly. It was corrected and appears below:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Anne Arundel County, Maryland, and Incorporated Areas				
Cabin Branch	Approximately 122 feet downstream of Chessie System.	+8	+7	Unincorporated Areas of Anne Arundel County.
	Approximately 325 feet upstream of Andover Road.	+115	+118	
Franklin Branch	At the Midway Branch confluence	None	+127	Unincorporated Areas of Anne Arundel County.
	Approximately 780 feet upstream of Clark Road.	None	+214	
Hall Creek	At the most downstream Calvert County boundary.	+43	+40	Unincorporated Areas of Anne Arundel County.
	At the most upstream Calvert County boundary	+54	+52	
Little Patuxent River	Approximately 600 feet upstream of the Patuxent River confluence.	+43	+46	Unincorporated Areas of Anne Arundel County.
	Approximately 1,456 feet upstream of Brock Bridge Road.	+130	+132	
Marley Creek	Approximately 485 feet upstream of Arundel Expressway.	+8	+7	Unincorporated Areas of Anne Arundel County.
	Approximately 165 feet upstream of Elevation Road.	+28	+26	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Midway Branch	At the Little Patuxent River confluence	+76	+85	Unincorporated Areas of Anne Arundel County.
	Approximately 0.58 mile upstream of Clark Road.	None	+211	
Patapsco River	Approximately 0.77 mile downstream of the Harbor Tunnel Thruway.	+9	+12	Unincorporated Areas of Anne Arundel County.
	Approximately 200 feet upstream of I–195	+25	+26	
Patuxent River	Approximately 0.56 mile downstream of Southern Maryland Boulevard.	+9	+8	Unincorporated Areas of Anne Arundel County.
	Approximately 0.57 mile upstream of Laurel Fort Meade Road.	+139	+140	
Sawmill Creek	At the upstream side of Crain Highway	+8	+10	Unincorporated Areas of Anne Arundel County.
	Approximately 400 feet upstream of Washington Baltimore and Annapolis Road.	None	+105	
Severn Run	Approximately 0.43 mile downstream of Veterans Highway.	+6	+7	Unincorporated Areas of Anne Arundel County.
	Approximately 0.5 mile upstream of Telegraph Road.	+97	+98	

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.
∧Mean Sea Level, rounded to the nearest 0.1 meter.
**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Anne Arundel County

Maps are available for inspection at the Anne Arundel County Permit Application Center, 2664 Riva Road, Annapolis, MD 21401.

[FR Doc. C1–2011–19545 Filed 10–6–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 11–1523; MB Docket No. 11–147]

Radio Broadcasting Services; Alamo, GA; Alton, MO; Boscobel, WI; Buffalo, OK; Cove, AR; Clayton, LA; Daisy, AR; Ennis, MT; Erick, OK; Grayville, IL; Harrison, MI; Haworth, OK; Leedey, OK; Owen, WI; Reydon, OK; Taloga, OK; Thomas, OK; Tigerton, WI; Weinert, TX; and Wright City, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division, on its own motion, proposes the deletion of twenty vacant allotments in various communities in Arkansas, Georgia, Illinois, Louisiana, Michigan, Missouri, Montana, Oklahoma, Texas, and Wisconsin. These vacant allotments have been auctioned through our competitive bidding process, and are considered unsold permits that were included in Auction 91. Interested parties should file comments expressing an interest in the vacant allotments to prevent their removal. Moreover, interested parties must provide an explanation as to why they did not participate in our competitive bidding process.

DATES: Comments must be filed on or before October 31, 2011, and reply comments on or before November 15, 2011.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11–147, adopted September 8, 2011, and released September 9, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–

B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Amend § 73.202(b) Table of FM Allotments as follows:

a. Remove Cove, under Arkansas, Cove, Channel 232A and Daisy, Channel 293C3.

b. Remove Alamo, under Georgia, Channel 287C3.

c. Remove Grayville, under Illinois, Channel 229A.

d. Remove Clayton, under Louisiana, Channel 266A.

e. Remove Harrison, under Michigan, Channel 280A.

f. Remove Alton, under Missouri, Channel 290A.

g. Remove Ennis, under Montana, Channel 254C2.

h. Remove Buffalo, under Oklahoma, Channel 224C2; Erick, Channel 259C2; Haworth, Channel 294A; Leedey, Channel 297A; Reydon, Channel 264C2; Taloga, Channel 226A; Thomas, Channel 288A; and Wright City, Channel 226A.

i. Remove Weinert, under Texas, Channel 266C3.

j. Remove Boscobel, under Wisconsin, Channel 244C3; Owen, Channel 242C3; and Tigerton, Channel 295A.

[FR Doc. 2011–26028 Filed 10–6–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BB29

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

ACTION: Stock Status Determinations; Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS); request for comments.

SUMMARY: Based on the 2010/2011 Southeast Data, Assessment and Review (SEDAR) assessments for sandbar, dusky, and blacknose sharks, NMFS is declaring the following stock status determinations. Sandbar sharks are still overfished, but no longer experiencing overfishing. Dusky sharks are still overfished and still experiencing overfishing (*i.e.,* their stock status has not changed). Blacknose sharks were assessed as two separate stocks for the first time in the 2010/2011 assessment (Atlantic and Gulf of Mexico); therefore, NMFS is making separate stock status determinations for the two blacknose shark stocks. The Atlantic stock is overfished and experiencing overfishing, and the status of the Gulf of Mexico stock is unknown. Scalloped hammerhead sharks were previously determined to be overfished and experiencing overfishing by NMFS in April 2011. As such, NMFS announces its intent to prepare an EIS under the National Environmental Policy Act (NEPA). This EIS would assess the potential effects on the human environment of action proposed through rulemaking to rebuild and end overfishing of these stocks, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Through the rulemaking process, NMFS would amend the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and examine management alternatives available to rebuild these shark stocks and end overfishing, as necessary. To begin scoping for that rulemaking process, NMFS is requesting comments on a range of commercial and recreational management measures, in both directed and incidental fisheries, including, but not limited to, quota levels, regional and seasonal quotas, retention limits, gear modifications, and time/area closures.

DATES: Five scoping meetings and a conference call will be held from October through December 2011. See **SUPPLEMENTARY INFORMATION** for meeting and call dates and locations. Scoping comments must be received no later than 5 p.m., local time, on December 31, 2011.

ADDRESSES: Scoping meetings will be held in Galloway, New Jersey; Morehead City, North Carolina; Panama City and Fort Pierce, Florida; and Belle Chasse, Louisiana. See **SUPPLEMENTARY INFORMATION** for dates and locations. You may also submit comments on this document, identified by NOAA–NMFS–2011–0229, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA–NMFS–2011–0229 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.
- *Mail:* Submit written comments to Peter Cooper, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Scoping Comments on Amendment 5 to HMS FMP."
- *Fax:* (301) 713–1917. Attn: Peter Cooper.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit

confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

For a copy of the stock assessments, please contact Peter Cooper (301) 427–8503.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Peter Cooper at (301) 427–8503, or Jackie Wilson at (240) 338–3936, or online at *http://www.nmfs.noaa.gov/sfa/hms/* or *http://www.sefsc.noaa.gov/sedar/Index.jsp.*

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The 2006 Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

Determination of Overfished Shark Fisheries

NMFS' determination of the status of a stock relative to overfishing and an overfished condition is based on both the exploitation rate and the current stock size. Thresholds used to determine the status of Atlantic HMS are fully described in Chapter 3 of the 1999 FMP for Atlantic Tunas, Swordfish, and Shark, and were fully adopted in the 2006 Consolidated HMS FMP. A species is considered overfished when the current biomass is less than the minimum stock size threshold. The minimum stock size threshold is determined based on the natural mortality of the stock and the biomass at maximum sustainable yield (B_{MSY}). Maximum sustainable yield is the maximum long-term average yield that can be produced by a stock on a continuing basis. The biomass can be lower than B_{MSY}, and the stock not declared overfished, as long as the biomass is above the biomass at the minimum stock size threshold. Overfishing may be occurring on a species if the current fishing mortality is greater than the fishing mortality (F) at maximum sustainable yield (F_{MSY}) ($F>F_{MSY}$). In the case of F, the maximum fishing mortality threshold is F_{MSY}. Thus, if F exceeds F_{MSY}, the stock is experiencing overfishing.

Recent assessments of sandbar, dusky, and blacknose sharks were completed through the SEDAR process (SEDAR 21). The SEDAR process is a cooperative process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. For these assessments, SEDAR used two face-to-face workshops and a series of webinars. The Data Workshop was a week-long face-to-face meeting, during which fisheries, monitoring, and life history data were reviewed and compiled. The SEDAR 21 Data Workshop was held June 21–25, 2010, in Charleston, SC (May 4, 2010, 75 FR 23676). The Assessment Process was conducted via a series of webinars, during which assessment models were developed and population parameters were estimated using the information provided from the Data Workshop. The SEDAR 21 Assessment Process was held via 18 webinars between September 2010 and January 2011 (August 26, 2010, 75 FR 52510; October 12, 2010, 75 FR 62506; November 17, 2010, 75 FR 70216; December 16, 2010, 75 FR 78679). Finally, the Review Workshop was a week-long face-to-face meeting during which independent experts reviewed the input data, assessment methods, and assessment products. The Review Workshop for these assessments was held in Annapolis, MD, on April 18–22, 2011 (March 15, 2011, 76 FR 13985). All meetings were open to the public, and all materials from these meetings are available on the SEDAR Web site or upon request.

The final 2010/2011 stock assessment reports for sandbar, dusky, and blacknose sharks in the U.S. Atlantic and Gulf of Mexico were recently completed (76 FR 61092, October 3, 2011). In each assessment, a base model was used to assess the individual populations. In addition, numerous sensitivity analyses were conducted during the assessment cycle for each assessment, which provided verification that the results of the assessment were robust to the assumptions about the underlying stock productivity and assumed levels of removal. Of these sensitivity runs, the Review Panel of the SEDAR 21 Review Panel Workshop selected which runs represented plausible "states of nature" of the stocks and requested projections of these and the base model. The ranges based on these selected sensitivity runs and the base models are given below. However, details on the different sensitivity analyses and projections are provided in the SEDAR 21 Stock Assessment Report for each assessment.

In the following stock assessment summaries, total allowable catch (TAC) is equal to the annual catch limit (ACL) for all fisheries that interact with the species, including directed commercial, incidental commercial, and recreational fisheries. After accounting for the mortality associated with other fisheries, NMFS is able to establish quotas for each stock, which are a subset of the ACL or TAC. Copies of the final 2010/2011 SEDAR 21 Stock Assessment Reports for each species are available (see **ADDRESSES**).

A. Sandbar Sharks

The 2010/2011 sandbar shark stock assessment provides an update from the 2005/2006 stock assessment on the status of the stock and projects their future abundance under a variety of catch levels in the U.S. Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Based on the 2005/2006 assessment, sandbar sharks were determined to be overfished and experiencing overfishing. NMFS established a rebuilding plan for this species in July 2008. The 2010/2011 assessment includes updated catch estimates, new biological data, and a number of fishery-independent and fishery-dependent catch rate series.

The base model used in the 2010/2011 sandbar assessment, an age-structured production model, indicated that the stock is overfished (spawning stock fecundity $[SSF]_{2009}/SSF_{MSY}=0.66$), but no longer experiencing overfishing ($F_{2009}/F_{MSY}=0.62$). In addition, 20 sensitivity runs were performed throughout the assessment cycle. The Review Panel selected seven sensitivity runs in addition to the base model to assess the underlying states of nature of the stock. Current biomass (*i.e.,* SSF) values from these selected sensitivity runs all indicated that the stock is overfished ($SSF_{2009}/SSF_{MSY}=0.51–0.72$). In addition, current F values from most of the selected sensitivity runs indicated that the stock is currently not experiencing overfishing ($F_{2009}/F_{MSY}=0.29–0.93$); whereas the low productivity sensitivity run indicated overfishing is occurring ($F_{2009}/F_{MSY}=2.62$). The assessment scientists, however, noted that the low and high productivity scenarios were unlikely to represent the true state of nature of the stock. Based on this, NMFS has determined that sandbar sharks are still overfished, but are no longer experiencing overfishing. Projections of the base model indicated that there is a 70 percent probability of rebuilding by 2066 with a TAC of 178 metric tons (mt) whole weight (ww) (128 mt dressed weight [dw]). There is a 50 percent probability of rebuilding by 2066 with a TAC of 286 mt ww (205.8 mt dw). The rebuilding year determined from the base model in the 2010/2011 assessment was calculated as the year the stock would rebuild with no fishing pressure (*i.e.,* F=0), or 2046, plus one generation time (the generation time for sandbar sharks is 20 years). The target year for

rebuilding ranged from 2047 to 2360 depending on the state of nature (*i.e.,* sensitivity run) of the stock. In addition, it was determined that the current TAC for the fishery (*i.e.,* 220 mt ww or 158.3 mt dw) could result in a greater than 70 percent probability of rebuilding by the current rebuilding date of 2070.

B. Dusky Sharks

The 2010/2011 dusky stock assessment provided an update to the 2006 dusky assessment. This is the first assessment for dusky sharks conducted within the SEDAR process. Based on the 2006 assessment, dusky sharks were determined to be overfished and experiencing overfishing. NMFS established a rebuilding plan for this species in July 2008. The base model used for the 2010/2011 assessment, an age-structured catch-free production model, showed that dusky sharks continue to be overfished (spawning stock biomass $[SSB]_{2009}/SSB_{MSY}$=0.44) and are still experiencing overfishing (F_{2009}/F_{MSY}=1.59). In addition, 19 sensitivity analyses were performed during the assessment cycle. The Review Panel selected four sensitivity runs in addition to the base model to assess the underlying states of nature of the stock. Current biomass (*i.e.,* SSB) values from these selected sensitivity runs all indicated that the stock is overfished (SSB_{2009}/SSB_{MSY}=0.41–0.50). In addition, current F values from the selected sensitivity runs indicated that the stock is currently experiencing overfishing (F_{2009}/F_{MSY}=1.39–4.35). Based on this, NMFS has determined that dusky sharks are still overfished and experiencing overfishing. The 2006 assessment predicted that dusky sharks could rebuild within 100 to 400 years. The rebuilding year determined from the base model in the 2010/2011 assessment was calculated as the year the stock would rebuild with no fishing pressure (*i.e.,* F=0), or 2059, plus one generation time (the generation time for dusky sharks is 40 years) or 2099. The target year for rebuilding ranged from 2081 to 2257 depending on the state of nature (*i.e.,* sensitivity run) of the stock. The base model indicated that the current fishing mortality (F_{2009}=0.06) would have to be reduced by more than half (to F=0.02) in order to have a 70 percent probability of rebuilding by 2099. The base model also estimated that with the current fishing mortality rate there is a low probability (11 percent) of stock recovery by 2408 (or 400 years).

C. Blacknose Sharks

The 2010/2011 blacknose shark stock assessment provides an update from the 2007 blacknose shark stock assessment. However, unlike the 2007 assessment, the 2010/2011 assessment assessed blacknose sharks for the first time as two separate stocks: a Gulf of Mexico and an Atlantic stock. In addition, because the assessment model for the Gulf of Mexico stock was unable to fit the apparent trends in some of the abundance indices and there was a fundamental lack of fit of the model to some of the input data, the Review Panel of the SEDAR 21 Review Panel Workshop did not accept the stock assessment for the Gulf of Mexico blacknose stock. Therefore, NMFS is declaring the status of the Gulf of Mexico blacknose shark stock as unknown.

For the Atlantic blacknose shark stock, the base model used for the 2010/2011 assessment, an age-structured production model, showed that Atlantic blacknose sharks are overfished (SSF_{2009}/SSF_{MSY}=0.60) and experiencing overfishing (F_{2009}/F_{MSY}=5.02). In addition, 14 sensitivity analyses were performed over the assessment cycle. The Review Panel selected five sensitivity runs in addition to the base model to assess the underlying states of nature of the stock. Current biomass (*i.e.,* SSF) values from these selected sensitivity runs all indicated that the stock is overfished (SSF_{2009}/SSF_{MSY}=0.43–0.64). In addition, current F values from the selected sensitivity runs indicated that the stock is currently experiencing overfishing (F_{2009}/F_{MSY}=3.26–22.53). Based on this, NMFS has determined that the Atlantic blacknose shark stock is overfished and experiencing overfishing. Projections of the base model indicated that the stock could rebuild by 2043 with a TAC of 7,300 blacknose sharks. The rebuilding year determined from the base model in the 2010/2011 assessment was calculated as the year the stock would rebuild with no fishing pressure (*i.e.,* F=0), or 2034, plus one generation time (the generation time for Atlantic blacknose sharks is 9 years). The target year for rebuilding ranged from 2033 to 2086 depending on the state of nature (*i.e.,* sensitivity run) of the stock. Thus, Atlantic blacknose sharks would not be able to rebuild by the current rebuilding target of 2027 under the current fishery-wide TAC of 19,200 blacknose sharks.

TABLE 1—SUMMARY TABLE OF BIOMASS AND FISHING MORTALITY FOR THE 2010/2011 SEDAR SHARK STOCK ASSESSMENTS

[Age-Structured Production Models (ASPMs) Were Used for Sandbar and Blacknose Sharks, and an Age-Structured Catch-Free Production Model (ASCFM) Was Used for Dusky Sharks]

Species	Current relative biomass level*	Current biomass (SSF_{2009})	Maximum sustainable yield biomass (SSF_{MSY})	Minimum stock size threshold (MSST)	Current relative fishing mortality rate (F_{2009}/F_{MSY})	Maximum fishing mortality threshold (F_{MSY})	Outlook
Sandbars sharks	0.51–0.72 (SSF_{2009}/SSF_{MSY})	215,900–984,770	349,330–1,377,800	395,922–423,622	0.29–2.62†	0.004–0.06	Overfished; overfishing is not occurring.
Dusky sharks	0.41–0.50 (SSB_{2009}/SSB_{MSY})	**NA	**NA	**NA	1.39–4.35	0.01–0.05	Overfished; Overfishing is occurring.
Atlantic blacknose sharks	0.43–0.64 (SSF_{2009}/SSF_{MSY})	38,816–168,300	77,577–288,360	72,607–77,447	3.26–22.53	0.01–0.15	Overfished; Overfishing is occurring.
Gulf of Mexico blacknose sharks.	***NA	***NA	***NA	***NA	***NA	***NA	***NA

* Spawning stock fecundity (SSF) or spawning stock biomass (SSB) was used as a proxy of biomass.

** An age-structured catch-free production model was used for the dusky shark stock assessment; therefore, absolute estimates of number of sharks are not available.

*** The Gulf of Mexico blacknose shark stock assessment was rejected because the model was unable to fit the apparent trends in some of the abundance indices and there was a fundamental lack of fit of the model to some of the input data; therefore, estimates are not available.

† F values from most of the selected sensitivity runs indicated that the stock is currently not experiencing overfishing (F_{2009}/F_{MSY}=0.29–0.93) whereas the low productivity sensitivity run indicated overfishing is occurring (F_{2009}/F_{MSY}=2.62). The assessment scientists, however, noted that the low and high productivity scenarios were unlikely to represent the true state of nature of the stock.

Request for Comments

Currently, both commercial and recreational fishermen may target blacknose sharks. However, dusky sharks are prohibited in all fisheries, and sandbar sharks are only allowed to be commercially harvested within a limited Shark Research Fishery. Recreational anglers are not allowed to retain sandbar sharks. In addition, scalloped hammerhead sharks, which were recently determined to be overfished and experiencing overfishing (April 28, 2011, 76 FR 23794), are managed within the non-sandbar large coastal shark (LCS) complex and are caught in recreational and commercial fisheries targeting sharks and in commercial pelagic longline (PLL) fisheries targeting tuna and swordfish. However, scalloped hammerhead sharks may only be retained when caught in directed recreational and commercial shark fisheries, and they are not allowed to be retained when caught in association with tuna and tuna-like fisheries, such as tuna and swordfish PLL fisheries per a recent final rule (August 29, 2011, 76 FR 53652).

Commercial regulations for blacknose sharks include, but are not limited to, no retention limit for directed shark permit holders, 16 pelagic and small coastal shark (SCS) species combined per vessel per trip for incidental shark permit holders, and an annual blacknose shark quota of 19.9 mt dw, which is adjusted each year for any overharvest in past fishing years. Commercial regulations for scalloped hammerhead sharks include, but are not limited to, a trip limit of 33 non-sandbar LCS for directed shark permit holders and a trip limit of 3 non-sandbar LCS for incidental shark permit holders. Scalloped hammerhead sharks are part of the non-sandbar LCS annual quota of 578.3 mt dw, which is split between the Gulf of Mexico (390.5 mt dw) and the Atlantic (187.8 mt dw). This quota is also adjusted each year for any overharvest from past fishing years. Recreational regulations for blacknose and scalloped hammerhead sharks include, but are not limited to, retention limit of 1 shark per vessel per trip with a 4.5-ft (54-in) fork length minimum size, although blacknose sharks rarely reach this minimum size.

Within the sandbar Shark Research Fishery, sandbar shark harvest is contingent upon the conditions of a Shark Research Fishery Permit, which is issued on an annual basis. There is an annual quota of 116.6 mt dw for sandbar sharks, and as with quotas for blacknose sharks and non-sandbar LCS, this quota is adjusted each year for any overharvest in past fishing years. Vessels participating in the Shark Research Fishery must carry federal fisheries observers whenever harvesting sandbar sharks, and all sharks, including blacknose and scalloped hammerhead sharks, must be offloaded with all their fins naturally attached.

NMFS anticipates changes to shark management as a result of the latest stock assessments through the rulemaking process and requests comments on potential future management options for this action. Five scoping meetings and a conference call will be held (see Table 2 for meeting times and locations) to provide the opportunity for public comment on potential shark management measures. These comments will be used to assist in the development of the upcoming amendment to the 2006 Consolidated Atlantic HMS FMP. Based on the assessment results, NMFS will focus on dusky sharks, which are already prohibited but found to still be experiencing overfishing; scalloped hammerhead sharks, which are often brought to the vessel dead and whose retention is limited in certain fisheries; and Atlantic and Gulf of Mexico blacknose sharks, which may require regional management. It appears that current management measures for sandbar sharks may remain appropriate, with the current TAC having a high probability of rebuilding within the rebuilding timeframe. Because of the mixed nature of the fisheries, it is likely that any changes could affect effort and mortality for all sharks.

TABLE 2—TIME AND LOCATIONS OF THE FIVE SCOPING MEETINGS AND CONFERENCE CALL

Date	Time	Meeting location	Meeting address
October 12, 2011	7–9 p.m.	Dolce Seaview Resort	401 South New York Road, Galloway, NJ 08205.
October 26, 2011	5–7 p.m.	Belle Chasse Auditorium	8398 HWY. 23, Belle Chasse, LA 70037.
November 2, 2011	4:30–6:30 p.m.	Southeast Fisheries Science Center, Panama City Laboratory.	3500 Delwood Beach Drive, Panama City, FL 32408.
November 3, 2011	4:30–6:30 p.m.	Fort Pierce Branch Library	101 Melody Lane, Fort Pierce, FL 34950.
December 7, 2011	4:30–6:30 p.m.	North Carolina Division of Marine Fisheries, Central District Office.	5285 HWY. 70 West/Arendell Street, Morehead City, NC 28557.
December 15, 2011	2–4 p.m.	Conference Call	To participate, please call: 888–989–7538; Passcode: 3994893.

In addition to the five scoping meetings and conference call, NMFS has requested to present the issues and options presentation to the five Atlantic Regional Fishery Management Councils (the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils) and the Atlantic and Gulf States Marine Fisheries Commissions during the public comment period. Please see the Councils' and Commissions' fall meeting notices for times and locations.

NMFS requests comments on potential commercial management options including, but not limited to, quota levels, regional and seasonal quotas, trip limits, minimum sizes, gear and effort modifications, time/area closures, and prohibited species. In

addition, NMFS is seeking comments on recreational management options including, but not limited to, retention limits, minimum sizes, authorized gears, and prohibited species. NMFS also seeks comments on display quotas and collection of sharks through exempted fishing permits, display permits, and scientific research permits. Comments received during scoping will assist NMFS in determining the options for future proposed rulemaking to conserve and manage shark resources and shark fisheries, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP. NMFS has drafted an issues and options presentation that summarizes the scalloped hammerhead, sandbar, dusky, and blacknose stock assessments, and offers preliminary ideas on potential management approaches to address overfishing on/overfished stocks in order to encourage and initiate public comment. The scoping meetings will focus on the issues raised in the issues and options presentation. NMFS welcomes additional thoughts and comments on appropriate management measures. The issues/options presentation is available online and by request (see **FOR FURTHER INFORMATION CONTACT**).

Based on the 2010/2011 stock assessments, NMFS believes the implementation of new management measures via the rulemaking process to amend the 2006 Consolidated HMS FMP is necessary to rebuild Atlantic shark stocks. NMFS anticipates completing this amendment and any related documents in April of 2013.

Dated: October 4, 2011.

Steven Thur,

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

[FR Doc. 2011–26021 Filed 10–4–11; 4:15 pm]

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Notices

Federal Register

Vol. 76, No. 195

Friday, October 7, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 3, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Acreage/Crop Reporting Streamlining Initiative.

OMB Control Number: 0563–NEW.

Summary of Collection: Section 508(f)(3) of the Federal Crop Insurance Act (7 U.S.C. 1515); 7 U.S.C. 7333(b)(3); 7 CFR 457.8 and 7 CFR 1437.7(d) mandates the collection of acreage and production information from producers who wish to participate in certain USDA programs. The Farm Service Agency (FSA) and the Risk Management Agency (RMA) are implementing the Acreage/Crop Reporting Streamlining Initiative (ACRSI), a Web-based single source reporting system to establish a single reporting and data collection.

Need and Use of the Information: This new initiative will reengineer the procedures, processes, and standards to simplify commodity, acreage and production reporting by producers, eliminate or minimize duplication of information collection by multiple agencies and reduce the burden on producers, insurance agents and AIPs. Information being collected will consist of, but not be limited to: Producer name, location state, commodity name, commodity type or variety, location county, date planted, land location (legal description, FSA farm number, FSA track number, FSA field number), intended use, prevented planting acres, acres planted but failed, planted acres, and production of commodity produced. Failure to collect the applicable information could result in unearned Federal benefits being issued or producers being denied eligibility to program benefits.

Description of Respondents: Individuals and households.

Number of Respondents: 293,000.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 358,925.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. 2011–25943 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–NOP–11–0081; NOP–11–15]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are Tuesday, November 29, 2011, 8 a.m. to 5:30 p.m.; Wednesday, November 30, 2011, 8 a.m. to 5:30 p.m.; Thursday, December 1, 2011, 8 a.m. to 5 p.m.; and Friday, December 2, 2011, 8 a.m. to 5:30 p.m. Pre-registration requests for public comments at the meeting are due by midnight Eastern Time on Sunday, November 13, 2011. Written comments received after November 13, 2011 may not be reviewed by the NOSB before the meeting.

ADDRESSES: The meeting will take place at the Hilton Savannah Desoto Hotel, 15 East Liberty Street, Savannah, GA 31401.

- View NOSB meeting agenda and draft recommendations at *http://www.ams.usda.gov/nop*. Requests for copies of these materials may be sent to Ms. Lorraine Coke, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Mail Stop 0268, Washington, DC 20250–0268; *Phone:* (202) 720–3252; *nosb@ams.usda.gov*.
- Submit written comments at *http://www.ams.usda.gov/nosbsavannah*. Comments received after November 13, 2011, may not be reviewed by the NOSB before the meeting. Written comments may also be submitted via mail to Ms. Lorraine Coke, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–S, Mail Stop 0268, Washington, DC 20250–0268. It is our intention to have all comments—whether they are submitted by mail or the internet—available for viewing at *http://www.ams.usda.gov/nosbsavannah*.

• Pre-register for a public comment slot at the meeting at *http://www.ams.usda.gov/nosbsavannahslots* or by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Ms. Lorraine Coke, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Mail Stop 0268, Washington, DC 20250–0268; *Phone:* (202) 720–3252; *nosb@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production, and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six subcommittees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the NOP to the Secretary of Agriculture. Since that time, the NOSB has submitted 269 addenda to its recommendations and reviewed more than 365 substances for inclusion on the National List of Allowed and Prohibited Substances. The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000, (65 FR 80548). The rule became effective April 21, 2001.

In addition, the OFPA authorizes the National List of Allowed and Prohibited Substances and provides that no allowed or prohibited substance would remain on the National List for a period exceeding five years unless the exemption or prohibition is reviewed and recommended for renewal by the NOSB and adopted by the Secretary of Agriculture. This expiration is commonly referred to as sunset of the National List. The National List appears at 7 CFR part 205, subpart G.

The principal purpose of NOSB meetings is to provide an opportunity for the organic community to weigh in on proposed NOSB recommendations and discussion items. These meetings also allow the NOSB to receive updates from the USDA/NOP on issues pertaining to organic agriculture.

Summary of April 2011 Meeting

At the spring 2011 meeting in Seattle, Washington the NOSB voted on the final 28 materials listings that were scheduled to sunset in 2012 (see Table 1). Of the 28 materials, 21 were relisted, 5 were relisted with amended annotations, and 2 were removed from the National List.

TABLE 1—SUNSET 2012 MATERIAL LISTINGS VOTED TO BE RELISTED AT APRIL 2011 MEETING

Substance	NOSB Recommendation
Synthetic substances allowed for use in organic crop production	
Calcium hypochlorite Chlorine dioxide Sodium hypochlorite	Relist with amended annotation "For pre-harvest use, residual chlorine levels in the water in direct crop contact or as water from cleaning irrigation systems applied to soil must not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act. For disinfecting or sanitizing equipment or tools or in edible sprout production, chlorine products may be used up to maximum labeled rates."
Copper sulfate	Relist.
Copper hydroxide	Relist.
Copper oxide	Relist.
Copper oxychloride	Relist.
Ethanol	Relist.
Isopropanol	Relist.
Newspapers or other	Relist.
Plastic mulch covers	Relist.
Newspapers or other	Relist.
Pheromones	Relist.
Sulfur dioxide	Remove from National List
Vitamin D_3	Relist.
Streptomycin	Relist with amended annotation "For fire blight control in apples and pears, only until October 21, 2014."
Lignin sulfonate	Relist.
Magnesium sulfate	Relist.
Ethylene gas	Relist.
Sodium silicate	Relist.
Lignin sulfonate	Relist.
Magnesium sulfate	Relist.
Ethylene gas	Relist.
Sodium silicate	Relist.
Lignin sulfonate	Relist.
Nonsynthetic substances prohibited for use in organic crop production	
Sodium nitrate	Relist and remove annotation (complete prohibition).
Nonsynthetic substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic"	
Enzymes	Relist.
Potassium iodide	Relist.
Synthetic substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic"	
Nutrient vitamins	Relist.
Nutrient minerals	Relist.

TABLE 1—SUNSET 2012 MATERIAL LISTINGS VOTED TO BE RELISTED AT APRIL 2011 MEETING—Continued

Substance	NOSB Recommendation
Potassium iodide	Relist.
Tocopherols	Relist.

The NOSB voted against relisting sulfur dioxide for use in organic crop production and potassium iodide for use as an ingredient in or on processed products labeled as ''organic'' or ''made with organic.'' In addition, the NOSB voted to remove the annotation for sodium nitrate on § 205.602 and establish a complete prohibition by the 2012 Sunset date.

Several petitioned materials were also reviewed at the meeting. The NOSB recommended against listing Nickel as a micronutrient; Calcium acid pyrophosphate as a leavening agent; and Sodium acid pyrophosphate as a sequestrant on cooked and uncooked produce. The NOSB recommended to add attapulgite—used to clarify plant and animal oils—to the National List as a non-synthetic material and recommended extending the expiration date for Tetracycline (for fire blight control in apples and pears) until October 21, 2014.

In additional to their review of materials, the NOSB also passed recommendations that would: Amend the definition of ''chemical change,'' and update three sections of their Policy and Procedures Manual: Sections III and IV, to harmonize the Vice Chair and Policy Development Committee job descriptions; and Section V, procedures for completing committee recommendations allowing the presenting committee to convene and vote to withdraw its recommendation prior to the Board's vote on the status of the recommendation.

Fall 2011 Meeting Agenda Items

The Crops Committee will present recommendations on material listings for copper sulfate, ozone, peracetic acid, and calcium chloride, which are scheduled to sunset in 2013 (see Table 2). The Crops Committee will also present recommendations to the board on four petitioned materials: Ammonium nonanoate, ferric phosphate (to remove), indole-3-butyric acid, and propane (odorized). The Crops Committee will also provide an update on fire blight in tree fruit and a discussion document on EPA List 3 inerts.

TABLE 2—CROPS SUBSTANCES SCHEDULED TO SUNSET IN 2013 AND BE ADDRESSED AT FALL MEETING

Section	Material	Expiration date
Synthetic substances allowed for use in organic crop production	Copper sulfate	November 3, 2013.
	Ozone	November 3, 2013.
	Peracetic acid	November 3, 2013.
Nonsynthetic substances prohibited for use in organic crop production	Calcium chloride	November 3, 2013.

The Livestock Committee will present recommendations on animal welfare; stocking rates, animal handling, transit, and slaughter; and species-specific scorecards. They will also address animal husbandry.

The Handling Committee will present recommendations on three material listings scheduled to sunset in 2013 (see Table 3). The Handling Committee will also present recommendations to the board on eight petitioned materials: Annatto extract, arachidonic acid (ARA) single-cell oil, beta-carotene, choline, docosahexaenoic acid (DHA) algal oil, potassium hydroxide, sulfur dioxide, and silicon dioxide. Other Handling Committee recommendations include a recommendation amending the chlorine materials annotation. They will also provide an update on nutrient vitamins and minerals.

TABLE 3—HANDLING SUBSTANCES SCHEDULED TO SUNSET IN 2013 AND BE ADDRESSED AT FALL MEETING

Section	Material	Expiration date
Nonsynthetic substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic.	Animal enzymes	November 3, 2013.
	Tartaric acid (made from grape wine)	November 3, 2013.
Synthetic substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic.	Tartaric acid (made from malic acid)	November 3, 2013.

The Materials Committee will present an aquaculture materials review update and a research priorities framework discussion document.

The Compliance, Accreditation, and Certification Committee will present recommendations on the evaluation of material review organizations, unannounced inspections, and inspector qualifications.

The Policy Development Committee will present recommendations on four sections of the NOSB Policy and Procedures Manual: administrative team, committee transparency, conflict of interest, and NOSB member and leadership transition. The Policy Development Committee will also present a discussion document on public comment procedures.

The Meeting is Open to the Public. The NOSB has scheduled time for public input for Tuesday, November 29, 2011, from 10:15 a.m. to 5:30 p.m. and Thursday, December 1, 2011 from 8 a.m. to 5 p.m. The NOSB will accommodate as many individuals and organizations as possible during these sessions. Individuals and organizations wishing to make oral presentations at the meeting should request one short time slot by visiting *http://www.ams.usda.gov/nosbsavannahslots* or by calling (202) 720–3252. All persons making oral presentations are requested to also provide their

comments in writing. Written submissions may contain information other than that presented at the oral presentation. Anyone may submit written comments at the meeting. Persons submitting written comments at the meeting are asked to provide sixteen copies.

Interested persons may visit *http://www.ams.usda.gov* to view NOSB recommendations, meeting agenda, and submit and/or view public comments.

Dated: September 29, 2011.

David Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–25551 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0037]

Notice of Decision To Allow Interstate Movement of Rambutan From Puerto Rico into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin allowing the interstate movement into the continental United States of fresh rambutan fruit from Puerto Rico. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the interstate movement of rambutan from Puerto Rico.

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

FOR FURTHER INFORMATION CONTACT: Mr. Philip Grove, Regulatory Coordinator, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1231; (301) 734–6280.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Regulated Articles From Hawaii and the Territories'' (7 CFR 318.13–1 through 318.13–26, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the interstate movement of fruits and vegetables into the United States from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands to prevent plant pests and noxious weeds from being introduced into and spread within the continental United States. (The continental United States is defined in 318.13–2 of the regulations as the 48 contiguous States, Alaska, and the District of Columbia.)

Section 318.13–4 contains a performance-based process for approving the interstate movement of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the interstate movement of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin allowing the interstate movement of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on June 16, 2011 (76 FR 35186–35187, Docket No. APHIS–2011–0037), in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the interstate movement of rambutan fruit (*Nephilium lappaceum L.*) from Puerto Rico into the continental United States. We solicited comments on the notice for 60 days ending on August 15, 2011. We received no comments by that date.

Therefore, in accordance with the regulations in 318.13–4, we are announcing our decision to begin allowing the interstate movement of rambutan from Puerto Rico into the continental United States subject to the following phytosanitary measures:

- Inspection and certification by an inspector in Puerto Rico that the rambutan are free of all quarantine pests likely to follow the pathway of interstate movement of the rambutan;
- Movement of the rambutan as commercial consignments only; and
- Distribution of the rambutan only within a defined area (a prohibition on movement to Hawaii, the Virgin Islands, or Guam) and marking of the boxes or containers in which the rambutan is distributed to indicate those distribution restrictions.

These conditions will be listed in the Puerto Rico Manual, found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/puerto_rico.pdf.* In addition to those specific measures, rambutan from Puerto Rico will be subject to the general requirements listed in 318.13–3 that are applicable to the interstate movement of all fruits and vegetables from Puerto Rico.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Dated: Done in Washington, DC, this 3rd day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26050 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and the pest risk analysis, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0037.*

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—2011-Crop Cane Sugar and Beet Sugar Marketing Allotments and Company Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to publish the fiscal year (FY) 2012 State sugar marketing allotments and company allocations to sugarcane and sugar beet processors, which apply to all domestic sugar marketed for human consumption in the United States from October 1, 2011, through September 30, 2012. Although CCC already has announced most of the information in this notice through a United States Department of Agriculture (USDA) news release, CCC is required to publish the determinations establishing, adjusting, or suspending sugar marketing allotments in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic and Policy Analysis Staff, Farm Service Agency, USDA, 1400 Independence Ave, SW., Mail Stop 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX

(202) 690–1480; e-mail: *barbara.fecso@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: On August 18, 2011, CCC announced the initial FY 2012 overall sugar marketing allotment quantity (OAQ) of 9,456,250 short tons, raw value (STRV). The OAQ is equal to 85 percent of the sugar for human consumption estimate for the crop year of 11,125,000 STRV as forecast in the July 2011 World Agricultural Supply and Demand Estimates (WASDE) report. The Agricultural Adjustment Act of 1938, as amended, requires that the OAQ be set at not less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year, and that a fixed portion of the OAQ be assigned to the beet sector and the cane sector. CCC distributed the FY 2012 beet sugar allotment of 5,139,472 STRV (54.35 percent of the OAQ) among the sugar beet processors and the cane sugar allotment of 4,316,778 STRV (45.65 percent of the OAQ) among the sugarcane processors.

CCC determined that it was not necessary to establish farm level proportionate shares in Louisiana, the only State eligible for proportionate shares, in FY 2012. The cane sugar sector was not expected to fill its allotment and therefore, there was no need to limit sugarcane acreage in that State through proportionate shares. Additionally, CCC determined that the Feedstock Flexibility Program (FFP) will not be implemented in FY 2012 based on the forecast of limited sugar supplies and prices significantly above the support level. The probability of forfeitures of sugar loan collateral under CCC price support loans in FY 2012, which triggers FFP, was determined to be very low.

The initial FY 2012 sugar marketing State allotments and processor allocations are listed in the following table:

FY 2012 OVERALL BEET AND CANE ALLOTMENTS AND ALLOCATIONS

Distribution	Initial FY 2012 allocations STRV
Beet Sugar	5,139,472
Cane Sugar	4,316,778
Total OAQ	9,456,250
Beet Processors' Marketing Allocations:	
Amalgamated Sugar Co.	1,100,400
American Crystal Sugar Co.	1,889,666
Michigan Sugar Co.	530,782
Minn-Dak Farmers Co-op	356,931
So. Minn Beet Sugar Co-op.	693,665
Western Sugar Co.	524,994
Wyoming Sugar Growers, LLC	43,034
Total Beet Sugar	5,139,472
State Cane Sugar Allotments:	
Florida	2,148,906
Louisiana	1,662,420
Texas	186,808
Hawaii	318,664
Total Cane Sugar	4,316,778
Cane Processors' Marketing Allocations:	
Florida:	
Florida Crystals	884,761
Growers Co-op of Florida	386,557
U.S. Sugar Corp	877,588
Total Florida	2,148,906
Louisiana:	
Louisiana Sugar Cane Products, Inc.	1,154,105
M.A. Patout & Sons	508,315
Total Louisiana	1,662,420
Texas:	
Rio Grande Valley	186,808
Hawaii:	
Gay &Robinson, Inc.	73,145
Hawaiian Commercial & Sugar Company	245,499
Total Hawaii	318,644

* The sums of individual entries may not match totals due to rounding.

Signed on September 30, 2011.

Bruce Nelson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2011–25945 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—School Foodservice Indirect Cost Study

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new information collection for the School Foodservice Indirect Cost Study.

DATES: Written comments on this notice must be received by December 6, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: John Endahl, Senior Program Analyst, Office of Research and Analysis, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of John Endahl at 703–305–2576 or via e-mail to *john.endahl@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact John Endahl, Senior Program Analyst, Office of Research and Analysis, Food and Nutrition Service/USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302; Fax: 703–305–2576; E-mail: *john.endahl@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: School Foodservice Indirect Cost Study.

OMB Number: 0584–NEW.

Expiration Date of Approval: Not yet determined.

Type of Information Collection Request: New information collection.

Abstract: The Healthy Hunger Free Kids Act of 2010 (Pub. L. 111–296) requires USDA to conduct this study to assess the extent to which school food authorities (SFAs) participating in the National School Lunch and Breakfast Programs pay indirect costs. The objective of the School Foodservice Indirect Cost Study is to collect and analyze up-to-date data on school districts' policies and procedures for reporting and recovering indirect costs attributable to their foodservice operations.

The ultimate goal of this study is to provide USDA and Congress the necessary information to assess the extent to which school districts indentify, treat, and charge indirect costs attributable to their foodservice operations. Some focus will be placed on whether school districts treat indirect costs attributable to their food service operations the same way that they treat indirect costs attributable to other grant programs. The School Lunch and Breakfast Cost Studies conducted in the early 1990s and again in the mid 2000s provide some evidence that as school district budgets have become increasingly tight, school districts have been increasingly likely to assess and recover indirect costs attributable to their food service operations. While this is permissible under USDA regulations, the regulations also stipulate that school districts must treat foodservice indirect costs in the same manner as their other grant programs. Previous research suggests that this is often not the case. This study will help FNS understand the extent to which current regulations are being followed and if there is a need for additional regulations and/or legislation to ensure that school districts treat indirect costs in the same manner across all of their grant programs. Specifically, this study will address the following questions:

☐ What is the role of the State departments of education in establishing or approving school districts' indirect cost rates?

☐ Are the indirect costs charged or recovered by school districts from foodservice consistent with Federal and State allocation requirements?

☐ What are the types and amounts of indirect costs charged and recovered by school districts from the foodservice account?

☐ What are the types and amounts of indirect costs that school districts could, but do not, charge and recover from the foodservice account?

☐ What is the impact of school districts charging and recovering indirect costs from the foodservice account on the ability of SFAs to operate on a break-even basis?

The activities to be undertaken subject to this notice include:

☐ Conducting a multi-modal (*e.g.* paper, Web, and telephone) survey of approximately 1,897 SFA Directors who will complete the survey out of 2,373 recruited.

☐ Conducting a multi-modal (*e.g.* paper, Web, and telephone) survey of approximately 1,897 School District Business Managers who will complete the survey out of 2,373 recruited.

☐ Conducting a telephone survey of all 56 State Agency Child Nutrition Directors.

☐ Conducting a telephone survey of all 56 State Agency Financial Officers.

Affected Public: State and Local Governments.

Type of Respondents: 2,373 SFA Directors, 2,373 School District Business Managers, 56 State Child Nutrition Directors, and 56 State Agency Financial Officers.

Estimated Total Number of Respondents: 4,858.

Frequency of Response: Once annually.

Estimated Annual Responses: 4,858.

Estimate of Time per Respondent and Annual Burden: Public reporting burden for this collection of information is estimated to average thirty (30) minutes per completed Self Administered Survey for the SFA Directors and sixty (60) minutes for the completed School District Business Managers. Reporting burden is estimated at thirty (30) minutes per completed telephone interview for the State Agency Child Nutrition Directors and sixty (60) minutes for the completed State Agency Financial Officer (this includes 30 minutes for data gathering and 30 minutes to respond to the interview). The initial sample in the School

Foodservice Indirect Cost Study includes 2,373 SFA Directors, 2,373 School District Business Managers, 56 State Child Nutrition Program Directors, and 56 State Agency Financial Officers. We expect responses from 1,897 SFA Directors, 1,897 School District Business Managers, 56 State Child Nutrition Program Directors, and 56 State Agency Financial Officers. The annual reporting burden is estimated at 3,010 hours (see table below).

Data collection activity	Respondents	Estimated number of respondents	Frequency of response	Estimated total annual responses	Average burden hours per response	Total annual burden estimate (in hours)
Self-Administered/Web/Phone Survey.	School Food Authority Directors:					
	Completed	1,897	1	1,897	0.50	949
	Attempted	476	1	476	0.08	40
Self-Administered/Web/Phone Survey.	School District Business Managers:					
	Completed	1897	1	1,897	1.00	1,897
	Attempted	476	1	476	0.08	40
Telephone Survey	State Agency Child Nutrition Directors:					
	Completed	56	1	56	0.50	28
Telephone Survey	State Agency Financial Officers:					
	Completed	56	1	56	1.00	56
Total		4,858		4,858	0.62	3,010

Dated: October 3, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–26058 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC); Notice of Meeting

AGENCY: Forest Service.

ACTION: Notice of Meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on September 29, 2011 to conduct a field review of stream and riparian restoration projects. The meeting will also discuss the Forest Service and BLM integrated weed management programs. Members will meet at the Deschutes National Forest Supervisor's office, Upper Deschutes Conference Room (1001 SW. Emkay Drive, Bend, Oregon) from 8 a.m. until 5 p.m. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Michael Keown, Province Liaison, Sisters Ranger District, Pine Street and Highway 20, Sisters, Oregon, 97759, Phone (541) 549–7735.

John Allen,

Deschutes National Forest Supervisor.

[FR Doc. 2011–25761 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sabine Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sabine Resource Advisory Committee will meet in Hemphill, Texas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss New Title II Project Proposals.

DATES: The meeting will be held via teleconference call on Thursday, October 20, 2011, 3:30 p.m.

ADDRESSES: The meeting will be held at the Sabine NF Office, 5050 State Hwy 21 East, Hemphill, TX 75948. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 5050 State Hwy 21 East, Hemphill, TX 75948. Please call ahead to (409) 625–1940 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: William E. Taylor, Jr., Designated Federal Officer, Sabine National Forest, 5050 State Hwy. 21 E., Hemphill, TX 75948: Telephone: 936–639–8501 or e-mail at: *etaylor @fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: The purpose of the meeting is to review progress on approved Title II Projects. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by October 14, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 5050 State Hwy 21 East, Hemphill, TX 75948 or by e-mail to *etaylor@fs.fed.us* or via facsimile to 409–625–1953.

Dated: October 3, 2011.

William E. Taylor, Jr.,

Designated Federal Officer, Sabine National Forest RAC.

[FR Doc. 2011–26027 Filed 10–6–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products (CLPP) from India. For the period September 1, 2009, through August 31, 2010, we have preliminarily determined that Navneet Publications (India) Limited (Navneet) and Riddhi Enterprises (Riddhi) have made sales of subject merchandise at less than normal value (NV).

In addition, based on the preliminary results for the respondents selected for individual examination, we have preliminarily determined a margin for those companies that were not selected for individual examination. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the period of review (POR). *See* ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results.

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

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (Navneet) or George McMahon (Riddhi) AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3692 or (202) 482–1167, respectively.

Background

On September 1, 2010, the Department issued a notice of opportunity to request an administrative review of this order for the POR of September 1, 2009, through August 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 53635 (September 1, 2010).

Pursuant to a request from the Association of American School Paper Suppliers, (AASPS or petitioner), the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to 35 companies,[1] including Navneet and Riddhi, for the period September 1, 2009, through August 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010. (*Initiation Notice*).[2]

On November 9, 2010, the Department notified interested parties of its intent to use CBP data for respondent selection. *See* Memorandum to The File, Through Melissa Skinner, Office Director, Office 3 and Through James Terpstra, Program Manager, Office 3 from Stephanie Moore, Case Analyst titled ''Customs and Border Patrol Data for Selection of Respondents for Individual Review.''

On November 16, 2010, we received comments from AASPS. On December 7, 2010, the Department selected Navneet and Riddhi as companies to be individually examined in this administrative review. *See* Memorandum to Melissa Skinner, Director, Office 3 Through James Terpstra, Program Manager, Office 3 from Stephanie Moore, Case Analyst titled ''Antidumping Duty Administrative Review of Certain Lined Paper Products from India: Selection of Respondents for Individual Review'' (Respondent Selection Memo), dated December 7, 2010.

On December 8, 2010, the Department issued an antidumping questionnaire (original questionnaire) to Navneet and Riddhi with a response due date of January 14, 2011. After granting an extension to Navneet, the original questionnaire response was submitted on February 10, 2011. On March 1, 2011, petitioner submitted deficiency comments regarding Navneet's February 10, 2011, questionnaire response. The Department issued several supplemental questionnaires to Navneet and the responses were received on April 28, 2011, July 28, 2011, and on September 9, 2011.

With respect to Riddhi, we received the Sections A–C questionnaire response on February 6, 2011. The Department issued a Sections A–C supplemental questionnaire to Riddhi on March 7, 2011, and Riddhi's response was received on April 12, 2011. Petitioner submitted a sales below the cost of production (COP) allegation regarding Riddhi on May 2, 2011. Based on the allegation submitted by petitioner, the Department determined that there are reasonable grounds to believe or suspect that Riddhi made sales of the subject merchandise in the third country market, Panama, at prices below its COP, pursuant to section 773(b) of the Tariff Act of 1930, as amended (the Act). On May 17, 2011, the Department initiated a sales below the COP investigation with respect to Riddhi and issued a Section D questionnaire to Riddhi on May 17, 2011. Riddhi responded to the Section D questionnaire on June 28, 2011. The Department issued several supplemental questionnaires to Riddhi and we received timely responses from Riddhi.

On May 27, 2011, the Department extended the time limit for the preliminary results. *See Certain Lined Paper Products From India: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 30908 (May 27, 2011).

Period of Review

The POR is September 1, 2009, through August 31, 2010.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are

[1] Abhinav Paper Products Pvt. Ltd.; American Scholar, Inc. and/or I–Scholar; Ampoules & Vials Mfg. Co. Ltd.; AR Printing & Packaging (India) Pvt.; Bafna Exports; Cello International Pvt. Ltd. (M/S Cello Paper Products); Corporate Stationery Pvt. Ltd.; Creative Divya; D.D International; Exel India (Pvt.) Ltd.; Exmart International Pvt. Ltd.; Fatechand Mahendrakumar; FFI International; Freight India Logistics Pvt. Ltd.; International Greetings Pvt. Ltd.; Kejriwal Paper Ltd., and Kejriwal Exports; Lodha Offset Limited; Magic International Pvt Ltd.; Marigold ExIm Pvt. Ltd.; Marisa International; Navneet Publications (India) Ltd.; Orient Press Ltd.; Paperwise Inc.; Pioneer Stationery Pvt. Ltd.; Premier Exports; Rajvansh International; Riddhi Enterprises; SAB International; Sar Transport Systems; Seet Kamal International; Sonal Printers Pvt Ltd; Super Impex; Swati Growth Funds Ltd.; V & M; and Yash Laminates.

[2] In the *Initiation Notice,* the Department incorrectly spelled a company name for which the petitioner requested a review. Specifically, the *Initiation Notice* listed the requested company, ''Exel India (Pvt.) Ltd.'' as ''Excel India (Pvt.) Ltd.'' We have corrected this typographical error in this notice.

measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly ™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly ™ pen-top computer. The product must bear the valid trademark Fly ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes ™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes ™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance ™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar Flex ™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020,

4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS).[3] The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by Navneet covered by the description in the ''Scope of the Order'' section above and sold in India during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Because Riddhi did not have home market sales of subject merchandise during the POR, all products produced by Riddhi covered by the description in the ''Scope of the Order'' section above and sold in Panama during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: (1) Form, (2) paper volume, (3) brightness, (4) binding type, (5) cover material, (6) back material, (7) number of inserts, and (8) insert material. Where there were no sales of identical merchandise in the home market made (or the third country market reported by Riddhi) in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (VCOM) between each U.S. model and the most similar home market model selected for comparison.

Normal Value Comparisons

To determine whether sales of CLPP from Navneet and Riddhi to the United States were made at less than NV, we compared Export Price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Export Price

For all U.S. sales made by Navneet and Riddhi, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on packed prices to the first unaffiliated purchaser in the United States. When appropriate, we reduced the EP prices to reflect discounts.

In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for movement expenses including foreign inland freight from plant/warehouse to the port of exportation, foreign brokerage and handling, and foreign bill of lading charges. We also increased EP by an amount equal to the countervailing duty (CVD) rate attributed to export subsidies in the most recently completed CLPP from India CVD segment[4] to which the respondent was subject, in accordance with section 772(c)(1)(C) of the Act.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Navneet's and Riddhi's volume of home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because Navneet had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

Riddhi reported that it ''does not have any sales of the foreign like product in the home market.'' *See* Riddhi's Section A questionnaire response (Sec. AQR), dated February 6, 2011, at page A–4 and Exhibit A–1. Riddhi reported the quantity and value of sales of foreign like product made to its three largest third country markets; Panama, Nicaragua, and Venezuela. *Id.* Based on this data, we find that Riddhi's third country sales to Panama meet the Department's five percent threshold for viability because its sales of the foreign like product are of sufficient quantity to form the basis of normal value. *See* 19 CFR 351.404(b)(2). In selecting a third country market, the Department also considers whether ''the foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries.'' *See* 19 CFR 351.404(e)(1). Riddhi reported that, among its three largest third country markets, Riddhi's sales of products also exported to the United States are highest to Panama. *Id.* at A–5. Based on the Department's examination of the sales data and Riddhi's reporting we find that, among the three third countries reported, Riddhi's third country sales to Panama are the most comparable to its sales to the United States. The Department also examines whether ''{t}he volume of sales to a particular third country is larger than the volume of sales to other third countries.'' *See* 19 CFR 351.404(e)(2). Riddhi reported that Panama represents Riddhi's largest third country market. *See* Riddhi's Sec. AQR, dated February 6, 2011, at page A–4. Based on the product comparability and the viability of Riddhi's sales in Panama, we find that Panama is an appropriate third country market to form the basis for the Department's calculation of NV.

Section 773(a)(1)(C)(i) of the Act applies to the Department's determination of NV if the foreign like product is not sold (or offered for sale) for consumption in the exporting country. When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a particular third country market may be utilized if: (1) The prices in such market are representative; (2) the aggregate quantity of the foreign like product sold by the producer or exporter in the third country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (3) the Department does not determine that a particular market situation in the third country market prevents a proper comparison with the U.S. price. The Department has examined Riddhi's reported third country sales quantity and volume and preliminarily finds that Riddhi has satisfied the aforementioned criteria.

[3] Based on requests from National Import Specialist, A. Gamble of CBP, the Department added headings 4811.90.9035, 4811.90.9080, 4820.30.0040 to the scope of this review. *See* Memorandum from Gayle Longest, Case Analyst, through James Terpstra to the File, dated July 6, 2011 and July 11, 2011.

[4] For the most recently completed CVD segment for Navneet, *see Certain Lined Paper Products from India: Notice of Preliminary Results of Countervailing Duty Administrative Review,* 73 FR 58121 at 58124–58125 (October 6, 2008), unchanged in the *Final Results,* 74 FR 6573 (February 10, 2009). For the most recently completed CVD segment for Riddhi, *see Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India,* 71 FR 45034, 45035 (August 8, 2006).

Therefore, we have used Riddhi's third country sales to Panama as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

B. Cost of Production Analysis

In regard to Navneet, because the Department disregarded below cost sales in the most recently completed segment of the proceeding in which Navneet participated,[5] we had reasonable grounds to believe or suspect that home market sales of the foreign like product by the respondents were made at prices below the COP during the POR, in accordance with section 773(b)(2)(A)(ii) of the Act. Therefore, we required Navneet to submit a response to Section D of the Department's questionnaire.

With respect to Riddhi, the Department initiated a sales-below-cost of production investigation based on petitioner's sales-below-cost of production allegation.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP by model based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A). We relied on the COP data submitted by both Navneet and Riddhi except the following adjustments. For these preliminary results, we adjusted Navneet's reported cost of manufacturing to include common production costs not allocated to divisions and other common production costs of the stationery division not allocated to subdivisions. *See* Preliminary Calculation Memorandum for Navneet, dated September 30, 2011.

Consistent with the Department's methodology in the *Third Administrative Review,*[6] for Navneet, we calculated the COP and constructed value (CV) of all control numbers (CONNUMs) sold in the home market to exclude the central excise tax on raw material inputs. *See Preliminary Results.*[7] We have made no adjustments to Riddhi's reported costs for these preliminary results.

Based on the review of record evidence, Riddhi and Navneet did not appear to experience significant changes in cost of materials (COM) during the POR. Therefore, for both Navneet and Riddhi, we followed our normal methodology of calculating an annual weighted-average cost.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP for the respondents to their home market (or third country market) sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* normally a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the home market (or third country) prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of COP Test

We disregard below-cost sales where: (1) 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on comparisons of price to weighted-average COPs for the POR, we determine that the below-cost sales of the product were at prices that would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that Navneet and Riddhi made sales below cost and we disregarded such sales where appropriate. *See* Preliminary Calculation Memorandum for Navneet, and Preliminary Calculation Memorandum for Riddhi, both dated September 30, 2011.

C. Calculation of Normal Value Based on Comparison Market Prices

For Navneet, we based home market prices on packed prices to unaffiliated purchasers in India. For Riddhi, we based third country market prices on packed prices to unaffiliated purchasers in Riddhi's third country market, Panama. Where appropriate, in accordance with section 773(a)(6)(B) of the Act, we deducted from the starting price inland freight. Pursuant to 19 CFR 351.401(c), we made deductions from the starting price, when appropriate, for discounts and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. We also deducted home market movement expenses pursuant to section 773(a)(6)(B) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b). Specifically, we made adjustments to normal value for comparison to Navneet and Riddhi's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.,* credit expenses) and adding U.S. direct selling expenses (*i.e.,* credit expenses) and U.S. commissions. *See* section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c). We also made adjustments for Navneet and Riddhi, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, *i.e.,* the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.[8]

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using weighted-average costs.

Finally, consistent with section 773(a)(6)(B)(iii) of the Act, with respect to Navneet, we made an adjustment for central excise taxes that Navneet paid on raw material inputs used to produce merchandise that was sold in the home market that were not paid on the same inputs used to produce merchandise that was exported from India. Under Indian law, Navneet was prohibited from charging this excise tax on sales of school supplies sold in India. *See* Navneet's questionnaire response dated February 10, 2011, at page B–50. In addition, the excise tax that Navneet paid on inputs into school supplies was not refunded and was not otherwise recovered by Navneet. *Id. See also Preliminary Results,* 75 FR at 64992, unchanged in the final results of the *Third Administrative Review.* Therefore,

[5] *See Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review,* 75 FR 7563 (February 22, 2010).

[6] *See Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 10876 (February 28, 2011) (*Third Administrative Review*).

[7] *See Certain Lined Paper Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 64988, 64992 (October 21, 2010) (*Preliminary Results*), unchanged in the final results of the *Third Administrative Review.*

[8] *See* 19 CFR 351.410(e).

we find the tax is included in the price and adjustment is warranted. For products other than school supplies, Navneet reported home market selling prices net of the excise tax. *See* Preliminary Calculation Memorandum for Navneet, dated September 30, 2011.

D. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transactions. In order to perform the LOT analysis, we examine the selling functions provided to different customer categories to evaluate the LOT in a particular market. Specifically, we compare the selling functions performed for home market sales with those performed with respect to the EP or CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act and 19 CFR 351.412, to determine if the home market LOT constituted a different LOT than the EP or CEP LOT.

Consistent with 19 CFR 351.412(c)(2), to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Navneet

Navneet has identified eight channels of distribution.[9] Seven channels are in the home market (HM): (1) Full service Navneet brand distributor, (2) limited service Boss brand, (3) chain store ''key-account,'' (4) institutional end-users who purchase materials for their own use; (5) schools that purchase customized products for their own use and for reselling to students, (6) full service Navneet brand directed to super stockists who then sell to distributors; and (7) limited service Boss brand directed to super stockists who then sell to distributors. One channel of distribution exists for the U.S. market.

Only two of Navneet's distribution channels are full service channels. In channel 1 (distributors with full-service merchandising) Navneet claims that it designs and produces products on its own account; maintains the products in regional and C&F warehouses nationwide; delivers products to distributors from local warehouses and issues invoices to distributors; and actively participates in advertising at the retail and consumer levels. *See* Navneet questionnaire response, dated February 10, 2011, at page A–14. In channel 6 (full service Navneet brand directed to super stockists who then sell to distributors) Navneet states that it designs and produces products on its own account; sells to super stockists, which maintains the products in its own warehouse; and actively participates in advertising at the retail and consumer levels. As a result, the levels of selling activities for channels 1 and 6 in the home market are at a different level of intensity than the levels of selling activities in the other channels of distribution in the home market. Thus, we find that the home market channels of distribution constitute two LOTs: (1) LOT1, which consists of channels 1 and 6, and (2) a combined LOT2, which consists of channels 2, 3, 4, 5, and 7, as reported by Navneet in its database. *See* Exhibit A.6.

In the U.S. market, Navneet made only EP sales of the subject merchandise. There was one channel of distribution for U.S. sales, importers/distributors, who distribute the products to retailers. Navneet produces products for the U.S. market to order, and ships them directly from the factory to the port for export, without being held in an intermediate warehouse. After shipment, Navneet has no further involvement in the sale. All marketing, selling and distribution activities are carried out by the importers/distributors for the U.S. market. *See id.* at A–23 through A–25, and Exhibit A.6. The selling activities that Navneet performs for its U.S. customers are business proprietary information. *See id.* at Exhibit A.6.

Based on our analysis of the selling activities in the home market and in the U.S. market, we find that Navneet's HM sales in LOT2 are at the same stage of marketing as the U.S. sales. Therefore, we have compared U.S. sales to Navneet's reported LOT2 sales in its HM sales database.

Riddhi

Riddhi reports that it has only one channel of distribution and one LOT in the third country market, Panama. Riddhi sold to one customer category, trading companies, in Panama. Riddhi reports that it performs the following selling functions for its sales to Panama: Packing, order input/processing, direct sales personnel, rebates, pays commissions, and provides freight and delivery. *See* Riddhi's Sec. AQR, dated February 6, 2011, at Exhibit A–5.

In the U.S. market, Riddhi reports that its sales were made through one channel of distribution and one LOT. Riddhi sold to one customer category, trading companies, in the United States. Riddhi does not claim any level of trade adjustment and the petitioner has not claimed that multiple levels of trade existed for Riddhi. *See* Riddhi's Section B and C questionnaire responses, dated February 6, 2011, at pages B–30 and C–28. Riddhi reports that it performs the following selling functions for its sales to the United States: Packing, order input/processing, direct sales personnel, provides cash discounts, pays commissions, and provides freight and delivery. *See* Riddhi's Sec. AQR, dated February 6, 2011, at Exhibit A–5. Riddhi reports that it performs the same selling functions for all of its U.S. customers, with the exception of one customer that has its containers filled at the Indian port rather than Riddhi's factory. *See id.* at Exhibits A–17, A–18. For more details, *see* Preliminary Calculation Memorandum for Riddhi, dated September 30, 2011.

Based on our analysis of the selling activities in the home market and in the U.S. market, we find that that there is one single level of trade for all sales in both the third country market and the U.S. market. Therefore, no basis exists for a level of trade adjustment.

E. Date of Sale

The Department normally uses the date of invoice as the date of sale. However, the Department may use a date other than the date of invoice (*e.g.,* the date of contract in the case of a long-term contract) if satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.,* price, quantity). *See* 19 CFR 351.401(i) of the regulations. For Navneet, based on the information on the record and consistent with the prior review, we preliminarily find that the purchase order date better reflects the date on which the exporter or producer established the material terms of sale for Navneet's U.S. sales. *See* Navneet's Sec.

[9] We note that Navneet refers to channel 6 as ''sales to the U.S. market'' and channel 7 as ''Boss brand sales directed to super stockists'' in the home market. *See* Navneet questionnaire response, dated February 10, 2011, at page A–11. However, for purposes of discussion in this notice, we changed the numbers to sequential order in the home market.

AQR, at page A–31. We have relied on invoice date as the date of sale for Navneet's home market, as this represents the date in which the material terms of sale are finalized.[10]

Riddhi reports ''both for U.S. market and third country market sales, there are no further changes to the agreed price and quantity once the commercial invoice is issued. Hence, the commercial invoice date sets out the final terms of sale.'' [11] Accordingly, we have relied on invoice date as the sale date for both the U.S. market and Riddhi's third country market, Panama.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank. *See* Preliminary Calculation Memorandum for Navneet, and Preliminary Calculation Memorandum for Riddhi, both dates September 30, 2011.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that weighted-average dumping margins exist for the following respondents for the period September 1, 2009, through August 31, 2010:

Manufacturer/exporter	Weighted average margin (percent)
Navneet Publications (India) Ltd.	2.65
Riddhi Enterprises, Ltd	3.58

Review-Specific Average Rate [12] Applicable to the 33 Non-Selected Companies Subject to This Review:

Manufacturer/Exporter	Weighted average margin (percent)
Abhinav Paper Products Pvt. Ltd.	3.02
American Scholar, Inc. and/or I–Scholar	3.02
Ampoules & Vials Mfg. Co. Ltd.	3.02
AR Printing & Packaging (India) Pvt.	3.02
Bafna Exports	3.02
Cello International Pvt. Ltd. (M/S Cello Paper Products)	3.02
Corporate Stationary Pvt. Ltd.	3.02
Creative Divya	3.02
D.D International	3.02
Exel India (Pvt.) Ltd.	3.02
Exmart International Pvt. Ltd.	3.02
Fatechand Mahendrakumar	3.02
FFI International	3.02
Freight India Logistics Pvt. Ltd	3.02
International Greetings Pvt. Ltd.	3.02
Kejriwal Paper Ltd., and Kejriwal Exports	3.02
Lodha Offset Limited	3.02
Magic International	3.02
Marigold Exlm Pvt. Ltd.	3.02
Marisa International	3.02
Orient Press Ltd.	3.02
Paperwise Inc.	3.02
Pioneer Stationery Pvt. Ltd.	3.02
Premier Exports	3.02
Rajvansh International	3.02
SAB International	3.02
Sar Transport Systems	3.02
Seet Kamal International	3.02
Super Impex	3.02
Sonal Printers Pvt Ltd.	3.02
Swati Growth Funds Ltd.	3.02
V & M	3.02
Yash Laminates	3.02

Public Comment

The Department intends to disclose calculations performed for these preliminary results within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a cd-rom. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h).

Assessment Rate

Upon completion of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific assessment rates for each respondent based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondents subject to this review for which the reviewed companies did not know that the merchandise which it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for

[10] *See Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review,* 75 FR 7563 (February 22, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

[11] *See* Riddhi's Sec. AQR at page A–23.

[12] This rate is a weighted-average percentage margin (calculated based on the publicly ranged U.S. quantities of the two reviewed companies with an affirmative dumping margin) for the period September 1, 2009, through August 31, 2010. *See* Memorandum to the File, titled, ''*Certain Lined Paper Products from India: Margin for Respondents Not Selected for Individual Examination,*'' from George McMahon and Stephanie Moore, Case Analysts, through James Terpstra, Program Manager, dated September 30, 2011.

the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. For a full discussion of this clarification, *see id*.

Cash Deposit Requirements

To calculate the cash deposit rates for Navneet and Riddhi, we divided their total dumping margins by the total net value of each of their sales during the review period. For the companies which were not selected for individual review, we have calculated a cash deposit weighted-average rate based on the publicly ranged U.S. quantities of Navneet's and Riddhi's affirmative dumping margins for the period September 1, 2009, through August 31, 2010.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CLPP from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.91 percent, the all-others rate established in the LTFV investigation. *See Lined Paper Orders.*[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[13] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Orders*).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed. These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 30, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–26065 Filed 10–6–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Preliminary Results Freshwater Crawfish Tail Meat From the People's Republic of China: of Antidumping Duty Administrative Review and Intent To Rescind Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The period of review (POR) is September 1, 2009, through August 31, 2010.

Although we have preliminarily determined that sales have not been made below normal value by Xiping Opeck Food Co., Ltd., our analysis of the applicable transactions requires additional information. See discussion below. We have preliminarily determined that sales have been made below normal value by China Kingdom (Beijing) Import & Export Co., Ltd.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

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

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0665 and (202) 482–1690, respectively.

Background

On September 15, 1997, the Department published in the **Federal Register** an amended final determination and antidumping duty order on freshwater crawfish tail meat from the PRC. See *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 48218 (September 15, 1997). On September 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 53635 (September 1, 2010).

On October 28, 2010, based on timely requests for an administrative review, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010) (*Initiation*). The review was initiated with respect to China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), Xiping Opeck Food Co., Ltd. (Xiping Opeck), Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang), Yancheng Hi-King Agriculture Developing Co., Ltd. (Yancheng Hi-King), and Nanjing Gemsen International Co., Ltd (Nanjing Gemsen).

On November 18, 2010, we selected Xiping Opeck and Yancheng Hi-King for individual examination. See memorandum entitled ''Freshwater Crawfish Tail Meat from the People's Republic of China—Respondent Selection,'' dated November 18, 2010.

The Department rescinded the review with respect to Yancheng Hi-King in *Freshwater Crawfish Tail Meat From the People's Republic of China: Rescission of Antidumping Duty Administrative*

Review in Part, 76 FR 10879 (February 28, 2011).

We extended the due date for the preliminary results of review by 120 days to September 30, 2011. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 32357 (June 6, 2011), and *Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 43260 (July 20, 2011).

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Intent To Rescind Review in Part

In accordance with 19 CFR 351.213(d)(3), the Department may rescind an administrative review, ''in whole or only with respect to a particular exporter or producer, if {the Department} concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise * * *.'' Record evidence indicates that Shanghai Ocean Flavor, Xuzhou Jinjiang, and Nanjing Gemsen did not have any exports of subject merchandise during the POR. See the November 1, 2010, submissions from Shanghai Ocean Flavor and Nanjing Gemsen and the December 22, 2010, submission from Xuzhou Jinjiang. Moreover, we have reviewed the CBP entry data for the POR and found no evidence of exports from these three entities. See Memorandum to File entitled ''Freshwater Crawfish Tail Meat from the People's Republic of China—placing CBP data on the record of this review,'' dated November 3, 2010. Additionally, on January 10, 2011, we requested that CBP report any contrary information. To date, CBP has not responded to our inquiry [1] and we have not received any evidence that these three entities had any shipments to the United States of subject merchandise during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department intends to rescind this review in part with respect to Shanghai Ocean Flavor, Xuzhou Jinjiang, and Nanjing Gemsen.

Allegation of Middleman Dumping

On June 7, 2011, the Crawfish Processors Alliance (CPA) made an allegation of middleman dumping. Between June 20, 2011, and August 19, 2011, we received comments from Xiping Opeck and CPA concerning the allegation. As we explain in detail in the memorandum entitled ''Freshwater Crawfish Tail Meat from the People's Republic of China—Evaluation of an Allegation of Middleman Dumping and Nature of Transactions Pertaining to the Entries Under Review,'' dated concurrently with this notice, at this time we do not find a middleman dumping inquiry as such to be the appropriate vehicle by which to examine the transactions relevant to the entries subject to this review. The record evidence suggests, however, a lack of commercial soundness in the transactions reported by Xiping Opeck in this review and that another entity in the distribution channel plays a role in the pricing associated with the entries of subject merchandise in this review.[2] Further inquiry and a determination on this issue is key in establishing whether another company in the distribution channel and/or Xiping Opeck is the entity properly subject to a dumping inquiry as an exporter of subject merchandise and ultimately responsible for the pricing of entries of crawfish tail meat into the United States at issue in this review. Consequently, we intend to issue a questionnaire to the entity alleged to be involved with entries subject to this review. After these preliminary results are published, we will issue our determination regarding the findings of our inquiry.

Non-Market-Economy Country Status

The Department considers the PRC to be a non-market-economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review,* 71 FR 26736 (May 8, 2006) (unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006)). None of the parties to this proceeding has contested NME treatment for the PRC. Therefore, for these preliminary results of administrative review we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

Surrogate Country

In antidumping proceedings involving NME countries, pursuant to section 773(c)(1) of the Act, the Department generally bases normal value on the value of the NME producer's factors of production (FOP). In accordance with section 773(c)(4) of the Act, in valuing the FOP the Department uses, to the extent possible, the prices or costs of the FOP in one or more market-economy countries that are at a level of economic development comparable to that of the NME country which are significant producers of merchandise comparable to the subject merchandise. The Department has determined that India, Indonesia, the Philippines, Peru, Ukraine, and Thailand are countries that are at a level of economic development comparable to that of the PRC.[3] Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004. While none of the

[1] CBP only responds to the Department's inquiry when there are records of shipments from the company in question. See, *e.g., Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products From Brazil: Notice of Rescission of Antidumping Duty Administrative Review,* 75 FR 65453, 65454 (October 25, 2010).

[2] We are withholding the identity of the alleged middleman because Xiping Opeck's customer claimed business-proprietary treatment of this information.

[3] See Memorandum entitled ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat *(''FCTM'')* from the People's Republic of China *(''PRC'')''* dated January 7, 2011.

countries the Department selected is a significant producer of freshwater crawfish tail meat,[4] India has a seafood-processing industry that is comparable to the crawfish industry with respect to factory overhead, selling, general, and administrative (SG&A) expenses, and profit.[5] Therefore, we have selected India as the primary surrogate country in which to value all inputs with the exception of live crawfish, the primary input, and the by-product, crawfish-shell scrap.

As noted, India does not have a fresh-crawfish industry (although it has a sea-crawfish industry) and we have determined that other forms of seafood are not sufficiently comparable to crawfish to serve as surrogates for live crawfish. Accordingly, we have valued live crawfish using the only information available on the record with which to value live crawfish, data which was obtained from the same source that was used to value live crawfish in several previous segments of this proceeding, *i.e.,* imports of live crawfish from Portugal into Spain as reported by *Agencia Tributaria,* the Spanish government agency responsible for trade statistics.[6] Spain is a significant producer of comparable merchandise, *i.e.,* whole processed crawfish,[7] and there are publicly available import statistics for Spain.

We have selected Indonesia as a secondary surrogate country for purposes of valuing the crawfish shell by-product because there are no appropriate Indian surrogate values for crawfish shell by-product on the record of this review and because the Indonesian pricing data are the only information available on the record with which to value crawfish shells. In addition, we find that Indonesia is appropriate to use for the following reasons: (a) It is at a level of economic development comparable to the PRC; (b) it produces wet crab and shrimp shells which are merchandise comparable to the shell by-product; (c) it has publicly available data, *i.e.,* a public price quote from an Indonesian company that has been used in prior segments of this proceeding.[8]

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006), and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303 (May 22, 2006).

In the *Initiation,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings. See *Initiation,* 75 FR at 66350. It is the Department's policy to assign all exporters of merchandise subject to a proceeding involving 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. The Department assigns separate rates in NME proceedings only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities under a test developed by the Department and described in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

In this administrative review, Xiping Opeck and China Kingdom are the only companies that submitted a separate rate certification. Additionally, the Department received a complete response to the antidumping questionnaire from Xiping Opeck which contained additional information pertaining to the company's eligibility for a separate rate.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies. See *Sparklers,* 56 FR at 20589.

Xiping Opeck and China Kingdom have both placed on the administrative record a copy of their business licenses and Foreign Trade Operator Registration Records. Xiping Opeck also placed on the administrative record a copy of the company's Articles of Incorporation. None of these documents contains restrictions with respect to export activities. In its separate rate certifications, Xiping Opeck and China Kingdom both certified the following concerning the companies during the POR: (1) As with the previous segment of the proceeding in which each firm was granted a separate rate (previous Granting Period), there were no government laws or regulations that controlled each firm's export activities; (2) the ownership under which the firm registered itself with the official government business license issuing authority remains the same as for the previous Granting Period; (3) the firm had a valid PRC Export Certificate of Approval, now referred to and labeled as a Registration Form for Foreign Trade Operator; (4) as in the previous Granting Period, in order to conduct export activities, the firm was not required by law or regulation at any level of government to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above; (5) PRC government laws and legislative enactments applicable to Xiping Opeck and China Kingdom remained the same as in the previous Granting Period. In prior cases, we have found an absence of *de jure* control absent proof on the record to the contrary. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544 (May 8, 1995) (*Furfuryl Alcohol*). We have no information in this review that would cause us to reconsider this determination.

Further, prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category ''Other,''

[4] See Memorandum entitled ''Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country,'' dated September 30, 2011 (Surrogate-Country Memo).

[5] *Id.*

[6] For an example of a previous segment of the proceeding where this source was used, see *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 34100 (June 16, 2010) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 79337 (December 20, 2010)).

[7] See Surrogate-Country Memo.

[8] See Memorandum entitled ''Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China, Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01'' dated August 5, 2002, which has been placed on the record of this review.

which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996 and 1997. See *Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review,* 64 FR 8543 (February 22, 1999) (*1999 Crawfish NSR Preliminary Results*) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review,* 64 FR 27961 (May 24, 1999)).

We have confirmed previously that freshwater crawfish tail meat is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities.* See *1999 Crawfish NSR Preliminary Results,* 64 FR at 8544.

The Department has found previously that the *Company Law of the People's Republic of China* governing business activities of Xiping Opeck and China Kingdom, made effective on July 1, 1994, with the amended version promulgated on August 28, 2004, states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005–2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005–2006 New Shipper Reviews,* 72 FR 57288 (October 9, 2007) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results and Partial Rescission of the 2005–2006 Antidumping Duty Administrative Review and Rescission of 2005–2006 New Shipper Reviews,* 73 FR 20249 (April 15, 2008)).

Additionally, the *Foreign Trade Law of the People's Republic of China* also indicates a lack of *de jure* government control. Specifically, this document identifies the rights and responsibilities of organizations engaging in foreign trade, grants autonomy to foreign-trade operators in management decisions, and establishes the foreign-trade operator's accountability for profits and losses. Based on the foregoing, the Department has preliminarily determined that there is an absence of *de jure* governmental control over the export activities of Xiping Opeck and China Kingdom.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide,* 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See *Silicon Carbide,* 59 FR at 22586–87, and *Furfuryl Alcohol,* 60 FR at 22545.

Xiping Opeck and China Kingdom have each made the following assertions: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans.

Based on the information on the record of this review, the Department has preliminarily determined that there is an absence of *de facto* governmental control over the export activities of Xiping Opeck and China Kingdom. Given that the Department has found that Xiping Opeck and China Kingdom operate free of *de jure* and *de facto* governmental control, we have preliminarily determined that Xiping Opeck and China Kingdom have satisfied the criteria for a separate rate.

Separate Rate for a Non-Selected Company

In accordance with section 777A(c)(2)(B) of the Act, we selected Xiping Opeck and Yancheng Hi-King for individual examination because we did not have the resources to examine all companies for which a review was requested. See Memorandum entitled ''Freshwater Crawfish Tail Meat From the People's Republic of China—Respondent Selection'' dated November 18, 2010. China Kingdom is the only exporter of crawfish tail meat from the PRC that demonstrated its eligibility for a separate rate which was not selected for individual examination in this review.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies, excluding zero, *de minimis,* and rates based entirely on facts available. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision (I&D) Memorandum at Comment 16. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis,* or based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents, including ''averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''

In previous cases, the Department has determined that a ''reasonable method'' to use when, as here, the rates of the respondents selected for individual examination are zero and *de minimis* is to apply to those companies not selected for individual examination (but eligible for a separate rate in NME cases) the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available (which may be from a prior administrative review or a new shipper review).[9] If any

[9] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review,* 76 FR 8338, 8342 (February 14, 2011) (unchanged in *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty*

such non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected company in the review in question, including when that rate is zero or *de minimis.*[10] In this case, there is only one non-selected company under review that is eligible for a separate rate and this company received its own calculated rate that is contemporaneous with or more recent than the most recent rates determined for other companies that are not zero, *de minimis,* or based entirely on facts available. Accordingly, we have concluded that in this case a reasonable method for determining the rate for the non-selected company, China Kingdom, is to apply its most recent individually calculated rate. Pursuant to this method, we are preliminarily assigning a rate of 18.87 percent to China Kingdom, its calculated rate in the previous administrative review. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 79337 (December 20, 2010). In assigning this separate rate, we did not impute the actions of any other companies to the behavior of the company not individually examined but based this determination on record evidence that may be deemed reasonably reflective of the potential dumping margin for the non-individually examined company, China Kingdom, in this administrative review.

U.S. Price

In accordance with section 772(a) of the Act, we based Xiping Opeck's U.S. price on export price because the first sales to unaffiliated purchasers were made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated export price based on the packed Cost and Freight price to the first unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, we calculated net export price by deducting foreign inland-freight expenses, foreign brokerage and handling expenses, ocean-freight expenses, and cold-storage expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses on surrogate values because a PRC company provided the movement services for Xiping Opeck (see the ''Normal Value'' section of this notice for further details).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006)).

In accordance with section 773(c) of the Act, we relied on the FOP data reported by Xiping Opeck for the POR.[11] We calculated normal value by adding together the value of the FOP, general expenses, profit, and packing costs. Specifically, we valued material, labor, energy, and packing by multiplying the reported per-unit rates for the factors consumed in producing the subject merchandise by the average per-unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the decision by the United States Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOP for surrogate general expenses and profit. See Memorandum to the File entitled ''Fresh Crawfish Tail Meat from the People's Republic of China: Surrogate-Value Memorandum,'' dated September 30, 2011 (Surrogate-Value Memo).

Surrogate Values

In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the data. For these preliminary results, in selecting the best available data for valuing FOPs in accordance with section 773(c)(1) of the Act, we followed our practice of choosing publicly available values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004)). We also considered the quality of the source of surrogate information in selecting surrogate values. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625, 55633 (November 8, 1994). Where we could only obtain surrogate values that were not contemporaneous with the POR, we inflated the surrogate values using, where appropriate, the Indian Wholesale Price Index (Indian WPI), the Indonesian Wholesale Price Index (Indonesian WPI), or Spanish Wholesale Price Index (Spanish WPI), as

Administrative Review, 76 FR 51940 (August 19, 2011)); see also *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460, 49463 (August 13, 2010), and *Amanda Foods (Vietnam) Ltd. v. United States,* 2011 WL 1423126 (CIT April 14, 2011).

[10] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review,* 73 FR 52015 (September 8, 2008), *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009) (changing rate for non-selected respondents because the final calculated rate for the selected respondent was above *de minimis*) (unchanged in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of the Fourth Antidumping Duty Administrative Review,* 74 FR 17816 (April 17, 2009)); see also *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47191, 47195 (September 15, 2009), and accompanying I&D Memorandum at Comment 16.

[11] We based the values of the FOPs on surrogate values (see ''Surrogate Values'' section).

published in the *International Financial Statistics* of the International Monetary Fund. See Surrogate-Value Memo.

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.[12] In this regard, we have found previously that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[13] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries.[14] Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[15]

We used the following surrogate values in our margin calculations for these preliminary results of review. We valued coal and packing materials using September 2009–August 2010 weighted-average Indian import values derived from the *Global Trade Atlas* online (*GTA*). The Indian import statistics that we obtained from the *GTA* were published by the Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce of India, and are contemporaneous with the POR.

We valued whole live crawfish using the publicly available data for Spanish imports of whole live crawfish from Portugal during the 2008–2009 POR and inflated this value using the Spanish WPI to make it contemporaneous with the POR.[16] We valued the crawfish shell by-product using a 2001 price quote from Indonesia for wet crab and shrimp shells and inflated this value using the Indonesian WPI to make it contemporaneous with the POR.

We valued water using data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) because this source includes a wide range of industrial water tariffs. Specifically, this source provides numerous industrial water rates within the Maharashtra province for December 2009 (for the ''inside industrial areas'' usage category and for the ''outside industrial areas'' usage category). We excluded industrial areas where either no data were reported or a ''0'' was reported. We inflated the surrogate value for water using the Indian WPI to make it contemporaneous with the POR.

To value electricity, we used March 2008 electricity price rates from *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* published by the Central Electricity Authority of the Government of India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation.

We valued non-refrigerated truck-freight expenses using an average of the per-unit average rates for September 2009, December 2009, March 2010, and June 2010 which we calculated from data at *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains rates for inland-freight trucking between many large Indian cities. We inflated (or deflated, depending on the month) the per-unit average truck-freight rates for the selected months of the POR using the Indian WPI to make it contemporaneous with the POR. We valued refrigerated-truck freight expenses based on price quotations for April 2004 from CTC Freight Carriers of Delhi, India, placed originally on the record of the antidumping investigation of certain frozen warmwater shrimp from the PRC. We inflated this surrogate value using the Indian WPI.

We valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2011: India,* published by the World Bank. Because these data were current throughout the POR, we did not inflate the value for brokerage and handling. See Surrogate-Value Memo for further details.

We valued international freight using the data obtained from the Descartes Carrier Rate Retrieval Database (Descartes) which is available at *http://descartes.com/.* The Descartes database is a Web-based service which publishes the ocean freight rates of numerous carriers. In prior administrative reviews the Department did not use the Descartes database as an ocean freight surrogate value source because the data did not appear to be publicly available. See, *e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews,* 71 FR 26329 (May 4, 2006), and accompanying I&D Memorandum at Comment 7. Upon reexamination, however, we have found that this database is accessible to government agencies without charge in compliance with Federal Maritime Commission regulations and, thus, we now find that this is a publicly available source.

In addition to being publicly available, the Descartes data reflect rates for multiple carriers, the Web site reports rates on a daily basis, the price data are based on routes that correspond closely to those used by the respondent, and they reflect merchandise similar to subject merchandise. Therefore, the Descartes data are product-specific, publicly available, a broad-market average, and contemporaneous with the POR. Accordingly, we find that the Descartes database is the best available source for valuing international freight on the record of this review because it

[12] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

[13] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-Year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying I&D Memorandum at 4–5, *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Result of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying I&D Memorandum at 4, *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying I&D Memorandum at 17, 19–20, and *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying I&D Memorandum at 23.

[14] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9600 (March 5, 2009) (unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009)).

[15] *Id.*

[16] We determined that it is not appropriate to use the contemporaneous Spanish import prices because the volume of shipments from Portugal during the POR does not appear to reflect the industry's typical commercial quantity. *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 66 FR 52100, 52105 (October 12, 2001) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 79337 (December 20, 2010)) (*2008–2009 Crawfish Review*); see also Surrogate-Value Memo for further details.

provides rates that are representative of the entire POR and a broader representation of product-specificity.

While we find that the Descartes database is the superior source on the record of the reviews for valuing international freight, to make the source less impractical, we had to define certain parameters in our selection of data. For example, we calculated the period-average international freight rate by obtaining rates from multiple carriers for a single day in each quarter of the POR. Further, we did not include rates in the period-average international freight calculation that we determined were from NME carriers. Additionally, we excluded from any individual rate calculation any charges that are covered by the brokerage and handling expenses that the respondent incurred and which are valued by the appropriate surrogate value. *See* Surrogate-Value Memo for further details.

For Xiping Opeck, we valued cold storage using a 2010–2011 long-term lease price quote obtained from Snowman Frozen Foods Ltd., an Indian national company involved in the distribution and storage of frozen and chilled foods. Because data reported in this source were not contemporaneous with the POR, we deflated the surrogate value for cold storage using the Indian WPI. See Surrogate-Value Memo. This source was used in the *2008–2009 Crawfish Review.* When the product is fully processed, packed, and then placed into a cold-storage facility not located at the production/processing facility prior to the date of shipment from the exporting country, our practice is to treat cold storage as a movement expense and deduct it from the U.S. price. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews,* 69 FR 46498, 46500 (August 3, 2004).

Previously, with respect to valuation of labor inputs, the Department used regression-based wages that captured the worldwide relationship between *per capita* Gross National Income (GNI) and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. On May 14, 2010, the Court of Appeals for the Federal Circuit (CAFC) in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (*Dorbest*), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology and the data sources. See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment,* 76 FR 9544 (February 18, 2011).

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings. See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).

For these preliminary results, we have calculated the labor inputs using the method described in *Labor Methodologies.* To value Xiping Opeck's labor inputs, we relied on data reported by India to the ILO in Chapter 6A of the Yearbook. We find further that the two-digit description under ISIC–Revision 3 (*i.e.,* 15—''Manufacture of Food Products and Beverages'') is the best available information on the record because it is specific to the industry being examined and is therefore derived from industries that produce comparable merchandise. Specifically, this category captures class 1512—''Processing and Preserving of Fish and Fish Products.'' Accordingly, relying on Chapter 6A of the Yearbook, we calculated the labor inputs using labor data reported by India to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard in accordance with section 773(c)(4) of the Act. The ILO data reported under Chapter 6A of the Yearbook reflects all costs related to labor, including wages, benefits, housing, training, *etc.* A more detailed description of the wage-rate calculation methodology is provided in the Surrogate-Value Memo.

We valued SG&A, factory overhead costs, and profit using the 2007–2008 financial statements of Nekkanti Sea Foods Ltd., an Indian seafood processor. See Surrogate-Value Memo. Because the financial statements used to calculate the surrogate financial ratios do not include itemized detail of labor costs, we did not make adjustments to certain labor costs in the surrogate financial ratios. See *Labor Methodologies,* 76 FR at 36093.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the IA Web site at *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Review

As a result of the administrative review, we preliminarily determine that the following weighted-average percentage dumping margins exist for the period September 1, 2009, through August 31, 2010:

Company	Margin (percent)
Xiping Opeck Food Co., Ltd.	0.00
China Kingdom (Beijing) Import & Export Co., Ltd.	18.87

Comments

We will disclose the calculations used in our analysis to interested parties to this review within five days of the date of publication of this notice. See 19 CFR 351.224(b).

Case briefs from interested parties may be submitted not later than seven (7) days after the date on which we issue our determination regarding the findings of our inquiry into the selling practices of the entity alleged to be involved with entries subject to this review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d)(1).

Any interested party may request a hearing no later than the date on which the case briefs are due. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case briefs. See 19 CFR 351.310(c).

If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. See 19

CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2).

The Department intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific (or customer-specific) assessment rates for merchandise subject to this review. Based on these preliminary results, we will direct CBP to assess no dumping duties on each entry made by the sole importer Xiping Opeck reported as its customer.

For China Kingdom, we will instruct CBP to apply the rate listed above to all entries of subject merchandise exported by this company.

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Xiping Opeck and China Kingdom, the cash-deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 223.01 percent; (4) for all non-PRC exporters of subject merchandise the cash-deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act.

Dated: September 30, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–26069 Filed 10–6–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review and Intent To Rescind, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (''OTR tires'') from the People's Republic of China (''PRC'') covering the period September 1, 2009, through August 31, 2010. We have preliminarily determined that the mandatory respondent, Tianjin United Tire & Rubber International Co., Ltd. (''TUTRIC''), made sales of subject merchandise to the United States at prices below normal value (''NV''). Additionally, we also preliminarily determine that Weihai Zhongwei Rubber Co., Ltd. (''Weihai'') had no shipments during the POR, and therefore we intend to rescind the review with respect to Weihai. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.*

We invite interested parties to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

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

FOR FURTHER INFORMATION CONTACT: Raquel Silva or Erin Begnal, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6475 or (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2008, the Department published the antidumping duty order on OTR tires from the PRC.[1] On September 1, 2010, the Department published a notice of opportunity to request an administrative review of the order for the period of review (''POR'') September 1, 2009, through August 31, 2010.[2] Interested parties made requests for review between September 17, 2010, and September 30, 2010, on certain exporters. On October 28, 2010, the Department initiated the administrative review of the antidumping duty order on OTR tires from the PRC for the 2009—2010 POR.[3] On January 18, 2011, the Department exercised its authority to limit the number of respondents selected for individual examination pursuant to section 777A(c)(2) of the Act. The Department selected the three largest exporters by volume as our mandatory respondents for this review: Qingdao Free Trade Zone Full World International Trading Co., Ltd. (''Full World''), Hebei Starbright Tire Co., Ltd. (''Starbright''), and TUTRIC. On January 19, 2011, the Department issued its antidumping duty questionnaire to the three mandatory respondents. On March 18, 2011, the Department published in the **Federal Register** a partial rescission of review for eight exporters, including Full World and Starbright.[4] Two

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[1] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 53635 (September 1, 2010).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010).

[4] The other companies for which the review was rescinded in addition to Full World and Starbright

companies remain under review: TUTRIC and Weihai.

On June 1, 2011, the Department published in the **Federal Register** a notice extending the time limit for the preliminary results of review by the full 120 days allowed under section 751(a)(3)(A) of the Act, to September 30, 2011.[5] Between February 17, 2011, and September 2, 2011, TUTRIC responded to the Department's original and supplemental questionnaires. Between August 31, 2011, and September 12, 2011, Titan Tire Corporation (''Petitioner'') and Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (collectively, ''Bridgestone''), a domestic interested party, submitted pre-preliminary comments.

Period of Review

The POR is September 1, 2009, through August 31, 2010.

Scope of Order

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[6] combine harvesters,[7] agricultural high clearance sprayers,[8] industrial tractors,[9] log-skidders,[10] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[11] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[12] front end loaders,[13] dozers,[14] lift trucks, straddle carriers,[15] graders,[16] mobile cranes,[17] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.,* tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type[18] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix Letter Designations

- P—Identifies a tire intended primarily for service on passenger cars;
- LT—Identifies a tire intended primarily for service on light trucks; and,
- ST—Identifies a special tire for trailers in highway service.

Suffix letter designations

- TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156'' or plus 0.250'';
- MH—Identifies tires for Mobile Homes;
- HC—Identifies a heavy duty tire designated for use on ''HC'' 15'' tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks,

include: Guizhou Tyre Co., Ltd., Guizhou Advance Rubber Co., Ltd. and Guizhou Tyre Import and Export Corporation; Hangzhou Zhongce Rubber Co., Ltd.; KS Holding Limited/KS Resources Limited; Laizhou Xiongying Rubber Industry Co., Ltd.; Qingdao Taifa Group Co., Ltd.; and Mai Shandong Radial Tyre Co., Ltd. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 14919 (March 18, 2011).

[5] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 31584 (June 1, 2011).

[6] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[7] Combine harvesters are used to harvest crops such as corn or wheat.

[8] Agricultural sprayers are used to irrigate agricultural fields.

[9] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[10] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[11] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[12] Haul trucks, which may be either rigid frame or articulated (*i.e.,* able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[13] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[14] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.,* typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

[15] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[16] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

[17] *I.e.,* ''on-site'' mobile cranes designed for off-highway use.

[18] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.,* sold with or separately from subject merchandise).

and other vehicles or other services, which use a similar designation.

- *Example:* 8R17.5 LT, 8R17.5 HC;
- LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Intent To Rescind, in Part, the Administrative Review

On January 10, 2011, Weihai submitted a letter stating that it had no shipments of OTR tires during the POR.[19] The Department reviewed the CBP data it had obtained for respondent selection purposes, and found that Weihai was not listed as having entered subject merchandise during the POR.[20] On February 7, 2011, the Department sent an inquiry to CBP regarding whether Weihai had any shipments of subject merchandise that entered during the POR and requesting that CBP inform the Department within ten days if Weihei had shipments of subject merchandise that entered during the POR.[21] We did not receive a response from CBP within the allotted ten days. Therefore, in accordance with 19 CFR 351.213(d)(3), we intend to rescind the review with respect to Weihai because there is no evidence on the record to indicate that Weihai had sales of subject merchandise to the United States during the POR.

Non-Market Economy Country Status

No party contested the Department's treatment of the PRC as a non-market economy (''NME'') country, and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews.[22] No interested party in this case has argued that we should do otherwise. Pursuant to section 771(18)(C)(i) of the Act, designation as an NME country remains in effect until it is revoked by the Department. As such, we continue to treat the PRC as an NME in this segment of the proceeding.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production (''FOPs''), valued in a surrogate market economy (''ME'') country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Factor Valuations'' section below.[23]

The Department determined that India, the Philippines, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development.[24] Once we have identified the countries that are economically comparable to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

The Department has determined that India is the appropriate surrogate country for use in this review. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. Bridgestone provided comments on March 15, 2011, arguing that India is the appropriate surrogate country for use in this review. Additionally, the data submitted by Titan, Bridgestone and TUTRIC for our consideration as potential surrogate values are sourced from India. For these reasons, and because no party has argued for a different country, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondent's FOPs, when available and appropriate. *See* Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

Separate Rates

In the *Initiation Notice,* the Department explained the process by which exporters and producers not being individually reviewed may obtain separate-rate status in NME reviews. The process requires exporters and producers to submit a separate-rate status application or separate-rate status certification (''SRC'').[25] However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed. On December 27, 2011, TUTRIC filed a timely response to the Department's SRC.[26]

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.[27] It is the Department's policy

[19] *See* Letter from Weihai, ''Certification of no exports, sales or entries of the subject merchandise,'' dated January 10, 2011.

[20] *See* Letter to All Interested Parties, ''2009–2010 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: CBP Data for Respondent Selection,'' dated November 12, 2010, at attachment 1.

[21] *See* CBP message number 1038304, dated February 7, 2011.

[22] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 52645 (September 10, 2008); and *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3560 (January 21, 2009).

[23] *See* the Department's Memorandum, ''Preliminary Results of the 2009–2010 Administrative Review of Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Surrogate Value Memorandum,'' dated concurrently with this notice (''Surrogate Value Memorandum'').

[24] *See* the Department's Memorandum, ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Pneumatic Off-the-Road Tires (''Tires'') From the People's Republic of China (''China''),'' dated February 24, 2011.

[25] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005), available at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

[26] *See* Letter from TUTRIC, ''Separate Rate Certification in the Administrative Review of the Antidumping Duty Order on New Pneumatic Off-the-Road Tires from the People's Republic of China,'' dated December 27, 2010 (''TUTRIC's SRC'') at 5.

[27] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 24892, 24899 (May 6, 2010) (unchanged in *Certain Coated Paper Suitable for*

to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[28] Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588, at Comment 1 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22587 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a further separate rate analysis is not necessary to determine whether it is independent from government control.[29]

TUTRIC submitted information indicating that it is partly owned by a PRC company. Therefore, the Department must analyze whether TUTRIC can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[30]

The evidence provided by TUTRIC supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.[31]

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[32] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. For TUTRIC, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) TUTRIC sets its own export prices independent of the government authority; (2) TUTRIC retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) TUTRIC has the authority to negotiate and sign contracts and other agreements; and (4) TUTRIC has autonomy from the government regarding the selection of management.[33]

The evidence placed on the record of this review by TUTRIC demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we are preliminarily granting TUTRIC separate-rate status.

Date of Sale

Section 401(i) of the Department's regulations states that:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[34]

After examining the questionnaire responses and the sales documentation placed on the record by TUTRIC, we preliminarily determine that invoice date is the most appropriate date of sale for TUTRIC. Nothing on the record rebuts the presumption that invoice date should be the date of sale.

Fair Value Comparisons

To determine whether TUTRIC's sales of OTR tires to the United States were made at less than fair value, we compared export price (''EP'') to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice, below, pursuant to section 771(35) of the Act.

U.S. Price

The Department considers the U.S. prices of sales by TUTRIC to be EPs in accordance with section 772(a) of the Act because they were the prices at which the subject merchandise was first sold before the date of importation by the producer/exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. We calculated EPs based on prices to unaffiliated purchaser(s) in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and brokerage and handling.

We valued foreign brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods from India where foreign brokerage and handling were provided by PRC service providers or paid for in renminbi. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by truck in India as reported in ''Doing Business 2010: India'' published by the World Bank.[35] Where foreign inland truck freight was provided by PRC service providers or paid for in renminbi, we also based those charges on surrogate rates from India. *See* ''Factor Valuations'' section below for

High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010)).

[28] *Id.*

[29] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[30] *See Sparklers,* 56 FR at 20589.

[31] *See* TUTRIC's SRC at 5.

[32] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[33] *See* TUTRIC's SRC at 5–7.

[34] *See also Allied Tube and Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale).

[35] *See* Surrogate Value Memorandum.

further discussion of these surrogate values.

Normal Value

We compared NV to individual EP transactions in accordance with section 777A(d)(2) of the Act, as appropriate. Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies.[36] Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by TUTRIC for materials, energy and labor.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by TUTRIC for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value (''SV'') to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department normally will value the factor using the actual price paid for the input if the quantities were meaningful and where the prices have not been distorted by dumping or subsidies.[37] To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, contemporaneous with the POR, represent a broad-market average, are product-specific, and tax-exclusive.[38] We therefore consider SVs based on the quality, specificity, and contemporaneity of the data.[39] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

On March 1, 2011, the Department invited all interested parties to submit publicly available information to value FOPs for consideration in the Department's preliminary results of review.[40] Petitioner, Bridgestone and TUTRIC each submitted publicly available information to value FOPs for the preliminary results between February 17, 2011, and September 8, 2011. A detailed description of all surrogate values used for TUTRIC can be found in the Surrogate Value Memorandum.

For the preliminary results, in accordance with the Department's practice, except where noted below, we used data from the Indian import statistics in the Global Trade Atlas (''GTA''), published by Global Trade Information Services, Inc. (''GTIS'') and other publicly available Indian sources to calculate SVs for TUTRIC's FOPs (*i.e.,* direct materials, energy, and scrap materials) and certain movement expenses. The GTA reports import statistics, such as from India, in the original reporting currency and thus this data corresponds to the original currency value reported by each country. The record shows that data in the Indian import statistics, as well as those from the other Indian sources, are contemporaneous with the POR, product-specific, and tax-exclusive.[41] In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index (''WPI'') as published in the International Monetary Fund's *International Financial Statistics.*[42]

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may reflect subsidized prices.[43] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[44] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and

[36] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China,* 71 FR 19695, 19703 (April 17, 2006) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China),* 71 FR 53079 (September 8, 2006)).

[37] *See Shakeproof Assembly Components Div of Ill Tool Works v. United States,* 268 F. 3d 1376, 1382–83 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[38] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004)).

[39] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

[40] *See* Letter to Interested Parties, ''2009–2010 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China,'' dated March 1, 2011.

[41] *See* Surrogate Value Memorandum.

[42] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9600 (March 5, 2009) (unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 74 FR 36656 (July 24, 2009)).

[43] *See* Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (''*OTCA 1988'')* at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

[44] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Results of Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

Thailand may have benefitted from these subsidies. Accordingly, we disregarded GTA import data from Indonesia, South Korea and Thailand. Additionally, we disregarded prices from NME countries.[45] Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[46]

TUTRIC claimed that certain of its reported raw material inputs were sourced from an ME country and paid for in ME currencies. When a respondent sources inputs from an ME supplier in meaningful quantities, we use the actual price paid by respondent for those inputs, except when prices may have been distorted by dumping or subsidies.[47] Where we found ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[48] we used the actual purchase prices of these inputs to value the full input.

Accordingly, we valued certain of TUTRIC's inputs using the ME currency prices paid where the total volume of the input purchased from all ME sources during the POR exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period. Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POR, and were otherwise valid, we weight-averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[49] Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, *see* ''Analysis Memorandum for the Preliminary Results: Tianjin United Tire & Rubber International Co., Ltd. (''TUTRIC'')'', dated concurrently with this notice (''Prelim Analysis Memorandum'').

With respect to the valuation of technically specified natural rubber (''TSNR''), Bridgestone suggested the Department use prices reported by the Indian Rubber Board (''IRB''), stating that the IRB reports prices for the specific type of TSNR used by TUTRIC and meets all of the Department's SV criteria in that the prices are period-wide, specific to the input, net of taxes and import duties, contemporaneous, and publicly available. Bridgestone further noted that the HTS categories for TSNR import data are basket categories that do not distinguish between grades, and therefore are not as specific to TUTRIC's input as the IRB's data.[50] TUTRIC submitted sections from the IRB's Web site showing that the IRB issued subsidies and other benefits to domestic rubber growers covering the period of 2000 through 2007.[51] Bridgestone countered by asserting that the subsidies do not cover the POR, and that subsidies would affect domestic and imported rubber prices equally, as imports seek to compete in the domestic market.[52]

For the preliminary results, we have determined to use Indian import data to value TUTRIC's TSNR, as we did in the previous two segments of the proceeding.[53] Although the IRB provides data more specific to the type of TSNR TUTRIC uses in production, we are unable to identify the source of the prices listed on the IRB's Web site.[54] Moreover, during the investigation, we rejected the IRB's data because we found the data to be ''quoted/indicative prices published on a particular day and do not necessarily reflect an actual sale of natural rubber.''[55] Because the Indian import data are known to be based on actual sales that are contemporaneous with the POR, tax-exclusive, and cover the input at issue, we find that they represent the best available information with which to value TSNR in this administrative review.

With respect to the valuation of Tyre cord B fabric (''NYCHFR'') and harness cloth (''HCLOTH''), TUTRIC submitted descriptions of NYCHFR as ''Nylon Tire Cord Fabric of High Tenacity Yarn;'' and of HCLOTH as ''Nylon Tire Cord Fabric of High Tenacity Yarn made of nylon 6.'' TUTRIC reported both FOPs in kilograms. Bridgestone proposed using Indian import data corresponding to HTS category 56049000[56] to value both of these FOPs, which was also used in both previous segments of the proceeding and is reported in Rs/kg.[57] TUTRIC proposed HTS categories 59021090[58] and 59021010,[59] which are reported in square meters, but TUTRIC did not provide a conversion formula from kilograms to square meters.

For the preliminary results, we have determined to use Indian import data corresponding to HTS category 56049000, which is not as specific to the input in question, but in the correct unit of measure. However, we intend to request that TUTRIC report a conversion factor for its NYCHFR and HCLOTH (from kg to square meters) subsequent to the issuance of these preliminary results in the event we determine a different HTS category (or categories) to be more representative of the input.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We valued coal using data

[45] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order,* 75 FR 41148, 41154 (July 15, 2010) (unchanged *in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 3086 (January 19, 2011)).

[46] *See id.*

[47] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27366 (May 19, 1997).

[48] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717–18 (October 19, 2006) (''Antidumping Methodologies: Market Economy Inputs'').*

[49] *See id.* at 61718.

[50] *See* Letter from Bridgestone, ''Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires From China: Bridgestone's Initial Submission of Surrogate Values,'' dated April 18, 2011. *See also* Letter from Bridgestone, ''Administrative Review of the Antidumping Duty Order on Off-The-Road Tires From The People's Republic of China: Bridgestone's Initial Pre-Preliminary Comments,'' dated August 31, 2011 (''Bridgestone's Initial Pre-Prelim Comments'').

[51] Letter from TUTRIC, ''First Surrogate Value Rebuttal Submission for TUTRIC in the Second Administrative Review of the Antidumping Duty Order on New Pneumatic Off-the-Road Tires from the People's Republic of China,'' dated April 28, 2011.

[52] *See* Bridgestone's Initial Pre-Prelim Comments.

[53] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 64259 (October 19, 2010) (unchanged in Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 22871 (April 25, 2011) (''*Tires AR1 Final''*)); *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 9278 (February 20, 2008) (unchanged in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008) (''*Tires LTFV Final''*)).

[54] *See* Surrogate Value Memorandum.

[55] *See Tires LTFV Final,* accompanying Issues and Decision Memorandum at Comment 12.

[56] ''Textile yarn, thread or cord covered or impregnated with rubber or plastic: Other Rubber Thread or Cord.''

[57] *See Tires AR1 Final* and *Tires LTFV Final.*

[58] ''Tire Cord Fabric of High Tenacity Yarn of Nylon, Polyamides, Polyesters or Viscose Rayon.''

[59] ''Tire Cord Fabric of High Tenacity Yarn of Nylon, Polyamides, Polyesters or Viscose Rayon.''

obtained for grade E coal reported in the 2007 edition of the Indian Minerals Yearbook published by the Indian Bureau of Mines. We valued water using the revised Maharashtra Industrial Development Corporation water rates available at *http://www.midcindia.com/water-supply.* We calculated the SV for steam based upon the 2009–2010 financial statement of Hindalco Industries Limited. *See* Surrogate Value Memorandum.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled ''Electricity Tariff & Duty and Average Rates of Electricity Supply in India,'' dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. Because the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. In other words, the Department did not inflate this value to the POR because the utility rates represent current rates, as indicated by the effective date listed for each of the rates provided.[60]

Section 733(c) of the Act, provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in a ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOPs, the Department utilizes, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a comparable level of economic development and (2) significant producers of comparable merchandise.[61]

Previously, the Department used regression-based wages that captured the worldwide relationship between *per capita* GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor in NME cases. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (''CAFC''), in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (''*Dorbest*''), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[62] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies.* To value TUTRIC's labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC–Revision 3 (''25—Manufacture of Rubber and Plastics Products'') to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Sub-Classification 25 of the ISIC–Revision 3 standard, in accordance with Section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is 49.49 Rs per hour. Because this wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by TUTRIC.[63] A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memorandum.

As stated above, the Department used India's ILO data reported under Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Because the financial statements used to calculate the surrogate financial ratios include itemized detail of indirect labor costs, the Department made adjustments to the surrogate financial ratios as contemplated by *Labor Methodologies.*[64]

Pursuant to 19 CFR 351.408(c)(4), the Department valued factory overhead, selling, general and administrative expenses and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. The Department's practice is to disregard financial statements containing evidence that the company received subsidies that the Department has previously found to be countervailable, and where there are other reliable data on the record for purposes of calculating the surrogate financial ratios.[65] For these preliminary results, we used the average of the ratios derived from the financial statements of two Indian producers of OTR tires: Falcon Tyres Ltd. (for the year ending on September 30, 2010) and TVS Srichakra Ltd. (for the year ending on March 31, 2010). We did not use financial statements from two other Indian producers, MRF Limited and JK Tyre and Industries Ltd., because they each contained evidence of receipt of a subsidy which the Department has found to be countervailable.[66] Specifically, these two Indian producers received benefits under the Export Promotion Capital Goods Scheme and the Sales Tax Deferred from Government of Karnataka program, respectively, both programs that the Department has previously determined to be countervailable.[67]

TUTRIC reported that scrap compound, scrap bead, scrap cloth and scrap tire were recovered as by-products of the production of subject merchandise and successfully demonstrated that the scrap materials have commercial value. Therefore, we have granted a by-product offset for the quantities of the reported by-product, valued using Indian import data.[68]

[60] *See, e.g., Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 32905 (June 10, 2010), and accompanying Issues and Decision Memorandum at Comment 3.

[61] *See* section 773(c)(4) of the Act.

[62] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

[63] *See* Surrogate Value Memorandum.

[64] *See* Surrogate Value Memorandum and *Labor Methodologies,* 76 FR at 36094.

[65] *See First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994 (May 13, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

[66] *See* Surrogate Value Memorandum.

[67] *See, e.g., Commodity Matchbooks From India: Final Affirmative Countervailing Duty Determination,* 74 FR 54547 (October 22, 2009) (finding the Export Promotion Capital Goods Scheme to be countervailable); *Notice of Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 45037, 45043 (August 8, 2006) (unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review,* 72 FR 6530 (February 12, 2007)).

[68] *See* Surrogate Value Memorandum.

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily find that the following weighted-average dumping margin exists for the period September 1, 2009, through August 31, 2010:

Exporter	Percent margin
Tianjin United Tire & Rubber International Co., Ltd.	7.35

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[69] Rebuttals to written comments may be filed no later than five days after the written comments are filed.[70]

Any interested party may request a hearing within 30 days of publication of this notice.[71] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.[72]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[73] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[74]

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise.

Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For TUTRIC, the cash deposit rate will be the company-specific rate established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific or exporter/producer-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 210.48 percent established in the *Tires LTFV Final;* and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

[69] *See* 19 CFR 351.309(c).

[70] *See* 19 CFR 351.309(d).

[71] *See* 19 CFR 351.310(c).

[72] *See* 19 CFR 351.310(d).

[73] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[74] *See* 19 CFR 351.301(c)(3).

Dated: September 30, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–26016 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the International Trade Commission's final determination of Certain Welded Large Diameter Line Pipe from Mexico (Secretariat File No. USA–MEX–2007–1904–03).

SUMMARY: Pursuant to the Decision of the Binational Panel dated August 29, 2011, affirming the International Trade Commission's final determination on remand described above, the panel review was completed on September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On August 29, 2011, the Binational Panel issued a Decision of the Panel affirming the International Trade Commission's remand determination concerning Certain Welded Large Diameter Line Pipe from Mexico (Secretariat File No. USA–MEX–2007–1904–03). The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge Committee was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists were discharged from their duties effective September 29, 2011.

Dated: October 3, 2011.

Ellen Bohon,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2011–25952 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–942]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the countervailable duty order on certain kitchen appliance shelving and racks (''Kitchen Racks'') from the People's Republic of China (''PRC''). The period of review (''POR'') is January 7, 2009, through December 31, 2009 (*see* further explanation in the ''Period of Review'' section of this notice). This review covers multiple exporters/producers, two of which are being individually reviewed as mandatory respondents. We preliminarily find that the mandatory respondents, Guangdong Wireking Housewares & Hardware Co., Ltd. (''Wireking'') and New King Shan (Zhu Hai) Co., Ltd. (''NKS''), received countervailable subsidies during the POR. Their countervailing duty (''CVD'') rates have been used to calculate the rate applied to the other firms subject to this review. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results.

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

FOR FURTHER INFORMATION CONTACT: Alexander Montoro or Jennifer Meek, Office of AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0238 and (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2009, the Department published a CVD order on Kitchen Racks from the PRC. *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Order,* 74 FR 46973 (September 14, 2009) (''*CVD Order*''). On September 1, 2010, we published a notice of ''Opportunity to Request Administrative Review'' for this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 53635, 53636 (September 1, 2010). On September 30, 2010, Nashville Wire Products Inc. and SSW Holding Company, Inc. (collectively ''Petitioners'') requested a review of ten companies. On October 28, 2010, we initiated a review of five of the companies: Wireking; NKS; Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia) (''Leader Metal''); Hangzhou Dunli Import and Export Co., Ltd./Hangzhou Dunli Industry Co., Ltd. (''Dunli''); and Jiangsu Weixi Group Co. (''Jiangsu Weixi''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349, 66351 (October 28, 2010), as corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews; Correction,* 75 FR 69054 (November 10, 2010) (''Initiation Correction'').[1] On November 29, 2010, after receiving further information from Petitioners, we initiated reviews of two additional companies requested by Petitioners: Asia Pacific CIS (Wuxi) Co., Ltd. (''Asia Pacific CIS'') and Hengtong Hardware Manufacturing (Huizhou) Co., Ltd. (''Hengtong''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 73036, 73038 (November 29, 2010).

In order to select mandatory respondents for this review, we issued questionnaires on December 3, 2010, to the seven companies covered by the review, requesting information about the quantity and value (''Q&V'') of subject merchandise exports made to the United States during the POR (''Q&V questionnaires''). As in the underlying investigation, we did not rely on CBP data for respondent selection because the Harmonized Tariff Schedule of the United States (''HTSUS'') categories that include subject merchandise are broad and contain products other than the subject merchandise. *See* Memorandum to Susan H. Kuhbach from Joseph Shuler, regarding ''Selection of Respondents for the Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China''

[1] The Department notes that only the POR for the antidumping duty administrative review was included in the November 10, 2010 notice. *See* Initiation Correction, 75 FR at 69059. All notices concerning the administrative review of the countervailing duty order apply to the POR referenced in the initiation notices and this notice, generally January 7, 2009, through December 31, 2009 (*see* ''Period of Review'' section below for further discussion).

(January 25, 2011) (''Respondent Selection Memorandum''). We received responses from five companies. We confirmed the delivery of the Q&V questionnaires to the two producers/exporters that did not respond, Asia Pacific CIS and Jiangsu Weixi. *See* Memorandum to the File from Joseph Shuler, regarding ''Delivery Confirmation of Quantity and Value Questionnaires'' (January 10, 2011) (''Delivery Confirmation Memo'').

On January 25, 2011, we selected Wireking and NKS as mandatory respondents. *See* Respondent Selection Memorandum.

On January 28, 2011, we issued CVD questionnaires to the Government of the PRC (''GOC''), Wireking, and NKS. On February 14, 2011, we issued a correction to the CVD questionnaire to Wireking and NKS. We received responses to our questionnaires from NKS on March 14, 2011 (''NQR'') and from the GOC and Wireking on March 22, 2011 (''GQR'' and ''WQR,'' respectively).

On June 15, 2011, we issued supplemental CVD questionnaires to the GOC, Wireking, and NKS. We received a partial response from NKS on June, 29, 2011 (''NSQR1a'') and a response to the remaining portion of the supplemental CVD questionnaire on July 15, 2011. On July 13, 2011 we received a response from Wireking (''WSQR1''), and on July 14, 2011, we received a response from the GOC (''GSQR1'').

On April 8, 2011, Petitioners requested that the Department expand its CVD administrative review to include one additional (new) subsidy program. We initiated on this program on June 28, 2011. *See* Memorandum to Susan Kuhbach from Jennifer Meek and Patricia Tran, regarding ''Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Initiation of New Subsidy Allegation'' (June 28, 2011). On July 1, 2011, we issued a questionnaire regarding the new subsidy allegation (''NSA'') to the GOC, Wireking, and NKS. On July 15, 2011, we received responses from the GOC and Wireking regarding the NSA questionnaire, and on July 18, 2011, we received a response to the NSA questionnaire from NKS (''NNSAQR'').

On August 12, 2011, we issued second supplemental questionnaires to the GOC, Wireking, and NKS. On August 19, 2011, we received a response from the GOC and NKS (''GSQR2'' and ''NSQR2,'' respectively). We received Wireking's response on August 26, 2011 (''WSQR2''). On August 26, 2011, we issued a third supplemental questionnaire to the GOC. We received a response from the GOC on September 2, 2011. On September 19, 2011, we issued a third supplemental questionnaire to NKS. We received a response from NKS on September 23, 2011.

On May 13, 2011, we extended the deadline for the preliminary results until September 30, 2011. *See Certain Kitchen Shelving and Racks From the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 27990 (May 13, 2011).

Scope of the Order

The scope of the order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens. Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and sub-frames (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Sub-frames from 6 inches by 10 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.20 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of the order is shelving in which the support surface is glass.

The merchandise subject to the order is currently classifiable in the HTSUS statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.40, 7321.90.60.90, 8418.99.80.60, 8419.90.95.20, 8516.90.80.00, and 8516.90.80.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Period of Review

We are conducting our analysis in this review on an annual basis, *i.e.,* for the entire calendar year 2009. However, the duties calculated will be applied as follows: for refrigeration shelving duties will be applied to entries from January 7, 2009 through May 6, 2009, and September 9, 2009, through December 31, 2009; for oven racks duties will apply to entries from September 9, 2009, through December 31, 2009.[2]

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (''the Act''), provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or if an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

1. Non-Cooperative Companies

As explained in the ''Background'' section above, two companies in this review, Asia Pacific CIS and Jiangsu Weixi, did not provide a response to the Department's Q&V questionnaire issued during the respondent selection process. We confirmed the delivery of the Q&V questionnaires to these companies. *See* Delivery Confirmation Memo. Accordingly, we determine that these non-cooperating companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for

[2] Entries of certain refrigeration shelving occurring during the period May 7, 2009, through September 8, 2009, were not suspended for CVD purposes due to the termination of provisional measures. Entries of certain oven racks occurring before September 9, 2009, were liquidated at the time of the CVD order because the International Trade Commission (''ITC'') found threat of material injury on certain oven racks. *See CVD Order,* 74 FR at 46974–75.

information concerning the Q&V of their sales, the companies impeded the Department's ability to select the most appropriate respondents in this review. Thus, we are basing the CVD rate for these non-cooperating companies on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's Q&V questionnaire, these companies did not cooperate to the best of their ability in this review. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the non-cooperating companies will not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as adverse facts available (''AFA''), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

In applying AFA for these non-cooperative companies, we are guided by the Department's approach in recent CVD investigations and reviews. *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011) (''Aluminum Extrusions from the PRC''), and accompanying Issues and Decision Memorandum (''Aluminum Extrusions from the PRC Decision Memorandum'') at ''Application of Adverse Inferences: Non-Cooperative Companies'' section;[3] *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 4936 (January 28, 2009), and accompanying Issues and Decision Memorandum at ''Application of Facts Available and Use of Adverse Inferences'' section; and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review,* 74 FR 20923 (May 6, 2009), and accompanying Issues and Decision Memorandum at ''SGOC Industrial Policy 2004–2009'' section. Under this practice, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant review or prior reviews of instant case, or calculated in prior CVD cases involving the country under review (in the instant case, the PRC).

In these preliminary results, for the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperating companies paid no income taxes during 2009. For programs other than those involving income tax rate reduction or exemption programs, we have first sought to apply, where available, the highest, above *de minimis* subsidy rate calculated for an *identical* program from any segment of this proceeding. Absent such a rate, we have applied, where available, the highest, above *de minimis* subsidy rate calculated for a *similar* program from any segment of this proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in this proceeding, we have applied the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in any PRC CVD proceeding, we applied the highest calculated subsidy rate for any program otherwise listed from any prior PRC CVD cases, so long as the non-cooperating companies conceivably could have used the program for which the rate was calculated. *See* Aluminum Extrusions from the PRC Decision Memorandum at ''Application of Adverse Inferences: Non-Cooperative Companies'' section; *see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum at ''Selection of the Adverse Facts Available Rate'' section. On this basis, we preliminarily determine the AFA subsidy rate for Asia Pacific CIS and Jiangsu Weixi to be 239.33 percent *ad valorem.*

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The Department considers information to be corroborated if it has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *Id.* at 869.

With regard to the reliability aspect of corroboration, we note that the rates were calculated in this review or in recent final CVD determinations. Further, the calculated rates were based upon information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information

[3] In the underlying investigation, the Department excluded from its AFA calculation for non-cooperative Q&V companies sub-national programs alleged after respondent selection. *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum (''Kitchen Racks Decision Memorandum'') at 5. Consistent with Aluminum Extrusions from the PRC, we determine it appropriate to now include newly alleged and self-reported programs in the AFA calculation for non-cooperative respondents, including non-cooperative Q&V companies. *See* Aluminum Extrusions from the PRC Decision Memorandum at Comment 8. We find that this approach prevents non-cooperative respondents from successfully avoiding being associated with newly alleged subsidy programs and subsidies discovered during the course of the investigation or review.

reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996).

In the absence of record evidence concerning these programs due to the non-cooperative Q&V companies' decision not to participate in the review, we have reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program from which the non-cooperative Q&V companies could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for a PRC program from which the non-cooperative Q&V companies could actually receive a benefit. Further, these rates were calculated for periods close to the POR in the instant case. Moreover, the failure of these companies to respond to requests for information has ''resulted in an egregious lack of evidence on the record to suggest an alternative rate.'' *Shanghai Taoen Int'l Trading Co., Ltd. v. United States,* 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005). Due to the lack of participation by the non-cooperative Q&V companies and the resulting lack of record information concerning their use of programs under review, the Department has corroborated the rates it selected to the extent practicable.

For a detailed discussion of the AFA rates selected for each program under review, *see* Memorandum to the File from Jennifer Meek and Alexander Montoro, regarding ''Application of Adverse Facts Available Rates for Preliminary Results'' (September 30, 2011).

2. GOC—Wire Rod

The Department sought information from the GOC about the producers of the wire rod purchased by Wireking and NKS. In particular, for any of the wire rod producers that are not majority-owned by the GOC, the GOC was asked, *inter alia,* to trace back the ownership to the ultimate individual or state owners. *See* the Department's January 28, 2011 questionnaire at Section II/Appendix 3. The GOC provided information indicating that several wire rod producers were owned in whole or in part by other companies, but failed to provide the ownership of those other companies. For one wire rod producer, the GOC failed to provide any ownership information.

We preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department may rely on ''facts available'' in making our preliminary determination. *See* sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. We are applying the adverse inference that the producers of wire rod used by Wireking and NKS are government authorities that provided a financial contribution as described under section 771(5)(D)(iv) of the Act.

Subsidies Valuation Information

Allocation Period

The average useful life period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised. *See* U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property,* at Table B–2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)–(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of the recipient and other companies if: (1) Cross-ownership exists between the companies; and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The Preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the Preamble, relationships captured by the cross-ownership definition include those where

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) * * * Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a ''golden share'' may also result in cross-ownership.

See Countervailing Duties; Final Rule, 63 FR 65348, 65401 (November 25, 1998).

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade (''CIT'') has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi, SA* v. *United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001).

Wireking stated that it is a wholly foreign-owned company, with its parent companies located outside of the PRC. Wireking also responded that it has no affiliates that are cross-owned within the meaning of 19 CFR 351.525(b)(6). *See* WQR at 4–5. Therefore, we are limiting our analysis to Wireking.

NKS also stated that it is wholly owned by entities located outside of the PRC. NKS identified several affiliated companies and reported that none of them are located in the PRC. *See* NQR at 3–5. Therefore, we are limiting our analysis to NKS.

Analysis of Programs

Based upon our analysis and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Two Free, Three Half Program

Under Article 8 of the *FIE Tax Law,* a foreign-invested enterprise (''FIE'') that is ''productive'' and is scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the subsequent three years. *See* GQR at 23. The GOC claims that the ''Two Free, Three Half'' program was terminated effective January 1, 2008, by the Enterprise Income Tax Law but companies already enjoying the preference were permitted to continue. *See* GQR at 23–24 and Exhibits 1, 3 and 4.

The Department has previously found this program countervailable. *See* CFS Decision Memorandum at 11–12; *see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010), and accompanying Issues and Decision Memorandum at 25.

NKS reported that it used this program during 2009. *See* NQR at 12.

We preliminarily determine that the exemption or reduction of the income tax paid by productive FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.,* ''productive'' FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings received by NKS as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax that NKS would have paid in the absence of the program with the income tax that NKS actually paid during 2009.

We divided the benefits received in 2009 by NKS's 2009 total sales, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we preliminarily determine that NKS received a countervailable subsidy of 1.00 percent *ad valorem* under this program.

B. Income Tax Reduction for FIEs Based on Geographic Location

To promote economic development and attract foreign investment, ''productive'' FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC were subject to preferential tax rates of 15 percent or 24 percent, depending on the zone. *See* GQR at 5. This program was created on June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance, and continued under Article 7 of the *FIE Tax Law* on July 1, 1991. *See* GQR at Exhibit 3.

As a result of the transition provisions of the new Enterprise Income Tax Law, which came into force on January 1, 2008, enterprises that were eligible for the reduced rates of 15 percent or 24 percent are to be gradually transitioned to the uniform rate of 25 percent over a five-year period. *See* GQR at 6 and Exhibit 2.

In the underlying investigation, we determined that this program conferred a countervailable benefit. *See* Kitchen Racks Decision Memorandum at 11–12. No interested party provided new evidence that would lead us to reconsider our earlier finding. *See, e.g., Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews,* 61 FR 52408, 52420 (October 7, 1996) (''{I}t is the Department's policy not to re-examine the issue of that program's countervailability in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration.''). Therefore, we continue to find that these tax benefits confer a countervailable subsidy.

NKS reported paying a reduced income tax rate during the POR under the program. *See* NQR at 10–11.

To calculate the benefit, we treated the income tax savings received by NKS as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax NKS would have paid in the absence of the program (*i.e.,* at the 25 percent rate) with the income tax that NKS actually paid during the 2009 (*i.e.,* at the reduced rate).

We divided the benefits received by NKS in 2009 by its 2009 total sales, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we preliminarily determine that NKS received a countervailable subsidy of 0.77 percent *ad valorem* under this program.

C. Exemption From City Maintenance and Construction Taxes and Education Fee Surcharges for FIEs in Guangdong Province

Pursuant to the *Circular on Temporarily Not Collecting City Maintenance and Construction Tax and Education Fee Surcharge for FIEs and Foreign Enterprises* (GUOSHUIFA {1994} No. 38), the local tax authorities exempt all FIEs and foreign enterprises from the city maintenance and construction tax and the education fee surcharge. *See* GQR at 10 at Exhibit 6 and KASR Decision Memorandum at 7.

In the underlying investigation, we determined that this program conferred a countervailable benefit, where this program was referred to as ''Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province.'' *See* Kitchen Racks Decision Memorandum at 13. No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find that these tax exemptions confer a countervailable subsidy.

Both NKS and Wireking stated they have never paid the City Maintenance and Construction Taxes or Education Fee Surcharges. *See* WQR at 10 and NKS at 11. These taxes are calculated as a percentage of the value added tax (''VAT'') and business and consumption taxes paid by enterprises. Wireking reported the amount it would have paid during the POR had it been subject to the City Maintenance and Construction Taxes or Education Fee Surcharges. *See* WSQR1 at 5. NKS states it did not pay any VAT, business or consumption tax and therefore, would not have paid this tax even if had not been exempted under this program. *See* NKSQR3 at 1.

To calculate the benefit, we treated Wireking's tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's savings received during 2009 by the company's total 2009 sales. To compute the amount of the city maintenance and construction tax savings, we compared what Wireking would have paid in the absence of the program (seven percent of the total of VAT, business tax, and consumption tax paid during 2009) with what it paid (zero). To calculate the amount of the savings from the educational fee surcharge exemption, we compared what Wireking would have paid in the absence of the program (three percent of

total of VAT, business tax, and consumption tax paid during 2009) with what it paid (zero). *Id.* On this basis, we preliminarily determine the countervailable subsidy to be 0.54 percent *ad valorem* for Wireking.

D. Shunde Famous Brands

According to the GOC, this program was established in June 2003 and was terminated in December 2008. The purpose of this program was to increase the popularity and competitiveness of the product brands and, to be eligible for awards, an enterprise must have been designated as a ''Famous Trademark of China,'' ''Chinese Famous Product,'' ''Famous Trademark of Guangdong province,'' or ''Guangdong Famous Product.'' *See* GSQR1 at 12–13 and Exhibit 4. The GOC stated that the government authority responsible for administering this program was the Shunde Economic and Trade Bureau (currently known as Shunde Economic Promotion Bureau). *Id.; see also* GSQR2 at Exhibit 1.

Wireking was approved for a grant under this program in 2008 and received these funds in 2009. *See* GSQR2 at Exhibit 1 and WQR at 13.

We preliminarily determine that Wireking received a countervailable subsidy during the POR under this program. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Based on information provided on the record, we further preliminarily determine that grants under this program are *de facto* specific based on the limited number of users. *See* section 771(5A)(D)(iii)(I) of the Act. *See also* GSQR2 at Exhibit 1.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). As Wireking was approved for the funds in 2008 and received payment in 2009, we first applied the ''0.5 percent test,'' pursuant to 19 CFR 351.524(b)(2) using Wireking's 2008 total sales. The grant amount was less than 0.5 percent of Wireking's 2008 total sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant and attributed the benefit to Wireking's total sales in the year of receipt (*i.e.,* 2009). On this basis, we preliminarily find a countervailable subsidy of 0.10 percent *ad valorem* for Wireking.

E. International Market Exploration Fund

The GOC confirmed that the International Market Exploration Fund program under which Wireking received assistance in 2009 is the same program as the ''International Market Development Fund Grants for Small and Medium Sized Enterprises'' program (also known as ''SME Fund'', ''Medium & Small Size Enterprise International Market Expansion Assistance'' program or ''International Exhibition Show Assistance'' program) previously investigated by the Department and found countervailable; *inter alia,* in Aluminum Extrusions from the PRC. *See* the Department's August 12, 2011, GOC second supplemental questionnaire at Attachment 1 and GSQR2 at 2.

Wireking reported receiving funds under this program in 2009. *See* WQR at 13.

We preliminarily determine that Wireking received a countervailable subsidy during the POR under this program. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Further, we find the grant to be specific under section 771(5A)(B) of the Act because receipt of the grant is contingent upon export performance.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). Treating the year of receipt as the year of approval, we applied the ''0.5 percent test,'' pursuant to 19 CFR 351.524(b)(2). The 2009 grant amount was less than 0.5 percent of Wireking's 2009 export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2009 and attributed the benefit to Wireking's 2009 export sales. On this basis, we preliminarily find a countervailable subsidy of 0.02 percent *ad valorem* for Wireking.

F. Foshan Shunde Export Rebate

Wireking reported that it received a grant but was unable to identify the program under which it was given. *See* WSQR1 at 4. Wireking claims the only information it has regarding this grant is what is listed on the receipt from a local finance bureau. *See* WSQR2 at 2–3. Wireking also states it has been unable to gather more information from the local finance bureau that distributed the funds. Based on the information it has, Wireking believes the grant was related to exports. We will continue to gather information regarding this program for the final results.

Based on the translated information provided by Wireking regarding the receipt of this grant, we preliminarily find that the grant under this program conferred a countervailable subsidy. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Further, we find the grant to be specific under section 771(5A)(B) of the Act because receipt of the grant is contingent upon export performance.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). As the approval date is unknown, we are treating the year of receipt, 2009, as the year of approval as facts available under section 776(a)(1) of the Act. We applied the ''0.5 percent test,'' pursuant to 19 CFR 351.524(b)(2). The grant amount was less than 0.5 percent of Wireking's 2009 export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2009 and attributed the benefit to Wireking's 2009 export sales. On this basis, we preliminarily determine the countervailable subsidy attributable to Wireking to be 0.06 percent *ad valorem* under this program.

G. Zhuhai Export Trade Grant

According to the GOC, the Zhuhai Export Trade Grant program was established pursuant to ZWJM (2009) No. 28 and came into effect in November 2008. The purpose of the program is to maintain the stable development of international trade. *See* GSQR1 at 39–44 and Exhibit 9. The GOC stated that the government authorities responsible for approving and administering the program are the Zhuhai Foreign Economic and Trade Corporation Bureau and the Zhuhai Finance Department. *See* GSQR1 at 39 and Exhibit SGQ–9. To be eligible for assistance under this program, a company must be registered in the Department of Industry and Commerce of Zhuhai City, must not have committed a significant unlawful act or behaved illegally in the last two years, must have exported at least USD 1 million in 2008 and 2009, and must have increased its exports in 2009 over 2008. *See* GSQR1 at 43.

NKS reported that it received a grant under this program during 2009. *See* NSQR1a at 3.

We preliminarily determine that NKS received a countervailable subsidy during the POR under this program. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Further, we find the grant to be specific under section

771(5A)(B) of the Act, because receipt of the grant is contingent upon export performance.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). As NKS was approved for the funds in 2009, we applied the ''0.5 percent test,'' pursuant to 19 CFR 351.524(b)(2) using NKS's 2009 total export sales. The 2009 grant amount was less than 0.5 percent of NKS's 2009 total export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2009. In accordance with 19 CFR 351.525(b)(2), we attributed the benefit to NKS's 2009 total export sales. On this basis, we preliminarily find a countervailable subsidy of 0.02 percent *ad valorem* for NKS.

H. Guangdong Supporting Fund

According the GOC, the Guangdong Supporting Fund program was established in 2009 with the purpose of helping enterprises affected by the economic crisis and maintaining employment. The GOC stated that the government authorities responsible for administering the program are the Guangdong Labor and Social Security Department, the Guangdong Financial Department and the local tax bureau. *See* GSQR1 at Exhibit 11. The Zhuhai Human Resource and Social Security Bureau is responsible for disbursing payments from the fund. *See* GSQR1 at 45. To be eligible, a company should be among the industries affected heavily by the financial crisis or the company must be in difficult position. *See* GSQR1 at 47. The GOC provided Yuelaoshefa (2009) No. 6, which defines ''enterprises in difficulty'' as enterprises in the ''Clothing, textile, toys, printing, packing, electronics, house appliance, hardware and plastics, and furniture business which have been significantly influenced by the international financial crisis * * * and have passed the identification of enterprises in difficulty.'' *See* GSQR1 at Exhibit 11.

NKS reported that it received a benefit during 2009. *See* NSQR1a at 3. According to the GOC, NKS received funding from the ''enterprise in a difficult position fund.'' *See* GSQR2 at 3.

We preliminarily determine that NKS received a countervailable subsidy during the POR under this program. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). We further determine preliminarily that grants under this program are limited to specific industries (*i.e.,* enterprises in difficulty such as clothing, textile, toys, printing, packing, electronics, house appliance, hardware and plastics, and furniture business). Hence, the grants are *de jure* specific under section 771(5A)(D)(i) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). We applied the ''0.5 percent test,'' pursuant to 19 CFR 351.524(b)(2) using NKS's 2009 total sales. The 2009 grant amount was less than 0.5 percent of NKS's 2009 total sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2009 and attributed the benefit to NKS's 2009 total sales. On this basis, we preliminarily find a countervailable subsidy of 0.06 percent *ad valorem* for NKS.

I. Provision of Wire Rod for Less Than Adequate Remuneration (''LTAR'')

In the underlying investigation, we determined that this program conferred a countervailable subsidy. *See* Kitchen Racks Decision Memorandum at 14–16. No interested party provided new evidence that would lead us to reconsider our earlier findings that the GOC's predominant role in the PRC's wire rod market renders domestic prices unusable as benchmarks or that the subsidy conferred is specific. *See* Kitchen Racks Decision Memorandum at 15–16. Therefore, our analysis focuses on whether the producers of the wire rod used by Wireking and NKS during the POR were authorities within the meaning of section 771(5)(B) of the Act and the extent of the benefit provided.

As discussed in the ''Use of Facts Otherwise Available and Adverse Inferences'' section, above, we preliminarily determine that the wire rod producers for whom the GOC did not provide complete ownership information are authorities. For one wire rod producer, the ownership information submitted by the GOC indicates majority state ownership. In tires from the PRC, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an ''authority.'' *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances,* 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum at 10. Thus, we preliminarily determine this supplier is an authority. For the final wire rod producer, which is owned by individuals, the GOC has submitted incomplete information. Consistent with section 782(d) of the Act, we intend to seek further information. *See* ''Programs for Which More Information is Required'' section of this notice, below. For these preliminary results, however, as we are still gathering information on this wire rod producer, we are not including purchases of wire rod produced by this company in the calculation. Based on our findings that certain wire rod producers are authorities, we preliminarily determine that the GOC is providing a good and, hence, a financial contribution under section 771(5)(D)(iii) of the Act.

To determine whether this financial contribution results in a subsidy to the Kitchen Racks producers, we followed 19 CFR 351.511(a)(2) for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration for the wire rod. As in the underlying investigation, we have relied upon tier two benchmarks, *i.e.,* world market prices available to purchasers in the PRC, to determine the existence and extent of the benefit to Wireking and NKS. *See* Kitchen Racks Decision Memorandum at 8. Petitioners submitted U.S. domestic prices for wire rod, but we have not included these in our benchmark because they do not represent world market prices available to purchasers in the PRC. Instead, we have used the Steel Business Briefing export prices for wire from Turkey, Black Sea, and Latin America which were submitted by Wireking. *See* Wireking's Comments on Benchmarking, June 15, 2011, and Memorandum to the File, regarding ''Wire Rod Benchmark Prices'' (September 30, 2011). This is consistent with the Department's use of data from industry publications such as the Steel Business Briefing in other recent CVD proceedings involving the PRC. *See, e.g., Wire Decking From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 32902 (June 10, 2010), and accompanying Issues and Decision Memorandum at ''Provision of HRS Steel for LTAR'' section.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included the freight charges that would be incurred to deliver wire rod to the respondents' plants. We have also added import duties, as reported by the

GOC, and VAT applicable to imports of wire rod into the PRC. We have compared these prices to the respondents' actual purchase prices, including any taxes and delivery charges incurred to deliver the product to their plants.

Comparing the adjusted benchmark prices to the prices paid by the respondents for the wire rod they purchased, we preliminarily determine that the GOC provided wire rod for LTAR, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid. *See* 19 CFR 351.511(a). We divided the difference between the amounts actually paid by Wireking and NKS for wire rod and what they would have paid under the benchmark in 2009, by the two companies' respective total sales in 2009. On this basis, we preliminarily determine the countervailable subsidy to be .82 percent and 0.46 percent *ad valorem* for Wireking and NKS, respectively.

J. Provision of Electricity for LTAR

In the underlying investigation, we determined that this program conferred a countervailable benefit. *See* Kitchen Racks Decision Memorandum at 5–6 and 13. No interested party provided new evidence that would lead us to reconsider our earlier finding that there is a financial contribution that is specific. Therefore, our analysis is focused on whether a benefit was conferred during the POR.

Both Wireking and NKS purchased electricity and provided monthly usage and payment data. *See* NQR at 12, NSQR1a at 8, NSQR2 at 3; WQR at 11, WSQR1 at 6, WSQR2 at 6.

To determine the existence and amount of any benefit from this program, we selected the highest electricity rates that were in effect during the POR, consistent with our approach in the investigation. The GOC provided electricity rate schedules for 2009, including the new rates based on the price adjustment that occurred in November 2009. *See* GQR at 23 and Exhibit GQ8–9. Based on these rate schedules, we have constructed benchmark peak, normal, and valley rates for the ''large industrial'' user category, including the highest provincial rate for the base rate.

Consistent with our approach in drill pipe from the PRC we first calculated the variable electricity costs of NKS and Wireking by multiplying the monthly kilowatt hours (''KWH'') consumed at each price category (peak, normal, and valley) by the corresponding electricity rates they paid. *See Drill Pipe From the People's Republic of China; Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at ''Provision of Electricity for LTAR'' section. Next, we calculated the benchmark variable electricity cost by multiplying the monthly KWH consumed at each price category (peak, normal, and valley) by the highest electricity rate charged for each price category. To calculate the benefit for each month, we subtracted the variable electricity charge paid by each respondent during the POR from the monthly benchmark variable electricity cost.

To measure whether the respondents received a benefit with regard to their transmitter capacity charge (a.k.a., base charge), we first multiplied the monthly transmitter capacity charged to the companies by the corresponding consumption quantity, where appropriate. Next, we calculated the benchmark transmitter capacity cost by multiplying companies' consumption quantities by the highest transmitter capacity rate reflected in the electricity rate benchmark chart. To calculate the benefit, we subtracted the transmitter costs paid by the companies during the POR from the benchmark transmitter costs.

We then calculated the total benefit received during the POR under this program by summing the benefits stemming from the respondents' variable electricity payments and transmitter capacity payments.

We divided the benefit by the respondents' total sales in POR. On this basis, we preliminarily determine net countervailable subsidy rates of 0.62 percent *ad valorem* for Wireking and 0.58 percent *ad valorem* for NKS.

II. Programs Preliminarily Determined Not To Confer a Measurable Benefit During the POR

A. Shunde Patent Application

According to the GOC, this program was established in January 2001 and is intended to encourage investors in the Shunde district, and to promote the development of the economy and technology. The GOC has reported that any enterprise or public institution, government organ, public organization, or individual, that resides in this district and applies for a domestic patent for an invention, utility model patent, or invention authorization, can receive this reward. *See* GSQR1 at 26.

Shunde Science and Technology Bureau (currently the Shunde Economic Promotion Bureau) administers the program. *See id.* at 25 and Exhibit 7.

Wireking applied for and received a grant under this program in 2009. *See* WQR at 11.

Based on our analysis, any potential benefit to Wireking under this program is less than 0.005 percent *ad valorem.* To determine this, we divided the amount received by Wireking in 2009 by Wireking's total sales in 2009. Where the countervailable subsidy rate for a program is less than 0.005 percent, the Department's practice is to not include that program in the total CVD rate. See, e.g., CFS Decision Memorandum at ''Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POR for GE'' section. Thus, without prejudice to the question of whether this program confers a countervailable subsidy, and consistent with our practice, we determine that any potential benefit under this program is not measurable. *See* CFS Decision Memorandum at 15.

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

III. Programs Found To Be Not Used or That Provided No Benefit During the POR

1. Income Tax Refund for Reinvestment of Profits in Export-Oriented Enterprises.
2. Income Tax Reduction for Export-Oriented FIEs.
3. Local Income Tax Exemption or Reduction Program for ''Productive'' FIEs.
4. Preferential Tax Subsidies for Research and Development by FIEs.
5. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs.
6. Income Tax Credits for Purchases of Domestically-Produced Equipment by Domestically-Owned Companies.
7. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax.
8. VAT Rebates for FIEs Purchasing Domestically-Produced Equipment.
9. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries.
10. Import Tariff Exemptions for the ''Encouragement of Investment by Taiwanese Compatriots''.
11. Provision of Nickel for LTAR by the GOC.
12. Government Provision of Water at LTAR to Companies Located in

Development Zones in Guangdong Province.

13. Exemption from Land Development Fees for Enterprises Located in Industrial Cluster Zones.

14. Reduction in Farmland Development Fees for Enterprises Located in Industrial Zones.

15. Special Subsidy from the Technology Development Fund to Encourage Technology Development.

16. Exemption from District and Township Level Highway Construction Fees for Enterprises Located in Industrial Cluster Zones.

17. Exemptions from or Reductions in Educational Supplementary Fees and Embankment Defense Fees for Enterprises Located in Industrial Cluster Zones.

18. Exemption from Real Estate Tax and Dike Maintaining Fee for FIEs in Guangdong Province.

19. Import Tariff Refunds and Exemptions for FIEs in Guangdong Province.

20. Preferential Loans and Interest Rate Subsidies in Guangdong Province.

21. Direct Grants in Guangdong Province.

22. Funds for ''Outward Expansion'' of Industries in Guangdong Province.

23. Land-related Subsidies to Companies Located in Specific Regions of Guangdong Province.

24. Import Tariff and VAT Refunds and Exemptions for FIEs in Zhejiang.

25. Grants to Promote Exports from Zhejiang Province.

26. Land-related Subsidies to Companies Located in Specific Regions of Zhejiang.

27. Special Subsidy from the Technology Development Fund to Encourage Technology Innovation.

28. Subsidies to Encourage Enterprises in Industrial Cluster Zones to Hire Post-Doctoral Workers.

29. Land Purchase Grant Subsidy to Enterprises Located in Industrial Cluster Zones and Encouraged Enterprises.

30. Exemption from Accommodating Facilities Fees for High-Tech and Large-Scale FIEs.

31. Income Tax Deduction for Technology Development Expenses of FIEs.

32. Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones.

33. Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones.

34. Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones.

35. Income Tax Rebate for ''Superior Industrial Enterprises'' in Zhongshan.

36. Accelerated Depreciation for New Technological Transformation Projects ''Superior Industrial Enterprises'' in Zhongshan.

37. Exemption from the Tax on Investments in Fixed Assets for ''Superior Industrial Enterprises'' in Zhongshan.

IV. Programs for Which More Information Is Required

A. Provision of Steel Strip for LTAR

The GOC has provided certain information requested by the Department regarding this newly alleged subsidy. In particular, the GOC has identified the producers of steel strip used by Wireking and NKS as state-owned and has provided more general information regarding the hot-rolled steel industry in the PRC. However, information on the record shows that NKS used cold-rolled strip and that Wireking may have used cold-rolled strip. *See* NNSAQR at Exhibit 2, WSQR3 at Exhibit 3, and Petitioners' submission regarding benchmarks for the NSA (July 26, 2011). Wireking did not distinguish its purchases of hot- and cold-rolled strip. *See* WSQR3 at Exhibit 3. To date, the GOC has not provided information about the cold-rolled steel industry in the PRC or about the specificity of any possible subsidy arising from the provision of cold-rolled strip for LTAR. Consistent with section 782(d) of the Act, we intend to seek further information on these issues. Also, we intend to ask Wireking to distinguish its purchases of hot- and cold-rolled strip.

B. Provision of Wire Rod for LTAR

As discussed above in the ''I.I. Provision of Wire Rod for LTAR'' section, the information submitted by the GOC regarding one wire rod producer is incomplete. Therefore, we intend to seek further information. In particular, we intend to ask the GOC to provide complete translations of the information submitted in its most recent supplemental response, to confirm and establish the completeness of that information, to establish the reliability of the information already provided to gather information on whether the owners are officials of a village committee or other village-level government entity and to seek information regarding the individual owners status as Communist Party of China (''CCP'') officials directly from the CCP or, alternatively, why the GOC cannot obtain or request this information from the CCP.

C. Zhuhai Farmer Training Subsidy

According the GOC, the Zhuhai Farmer Training Subsidy program was established in 2007 to promote the hiring and training of migrant rural workers. The GOC identified the municipal or district labor and social security department as the administrators of the program. *See* GSQR1 at 32 and Exhibit SGQ–8. To receive benefits an enterprise must employ more than fifty migrant rural workers from other provinces, have no arrears in the payment of wages, must sign employment contracts with migrant rural workers for more than one year, and have the necessary training place and equipment. *See* GSQR1 at 32–37.

The GOC's response requires clarification with regard to the information provided on whether this program is administered specific. Consistent with section 782(d) of the Act, we intend to seek further information on this issue.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for the mandatory respondents, Wireking and NKS.

For the non-selected respondents which responded to our requests for Q&V information (*i.e.,* Leader Metal, Dunli, and Hengtong), we have followed the Department's practice, which is to base the margin on an average of the margins calculated for those companies selected for individual review, excluding *de minimis* rates or rates based entirely on AFA. *See, e.g., Certain Pasta From Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 18806, 18811 (April 13, 2010), unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386 (June 29, 2010). Therefore, we have preliminarily assigned to Leader Metal, Hangzhou Dunli, and Hengtong the simple average of the rates calculated for Wireking and NKS. We have used a simple average rather than a weighted average because weight averaging the rates of the mandatory respondents risks disclosure of proprietary information.

For the non-selected respondents which did not respond to our requests for Q&V information (*i.e.,* Jiangsu Weixi and Asia Pacific CIS), we are applying an AFA rate, as described above.

We preliminarily find the net subsidy rate for the producers/exporters under review to be as follows:

Producer/Exporter	Net subsidy rate (percent)
Guangdong Wireking Housewares & Hardware Co., Ltd	2.16
New King Shan (Zhu Hai) Co., Ltd	2.89
Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia)	2.53
Hangzhou Dunli Import and Export Co., Ltd/Hangzhou Dunli Industry Co., Ltd	2.53
Hengtong Hardware Manufacturing (Huizhou) Co., Ltd	2.53
Jiangsu Weixi Group Co.	239.33
Asia Pacific CIS (Wuxi) Co., Ltd	239.33

Assessment Rates

If these preliminary results are adopted in our final results of this review, the Department intends to issue appropriate assessment instructions (as described below) directly to CBP 15 days after publication of the final results of this review.

Oven Racks

For certain oven racks from the PRC entered, or withdrawn from warehouse for consumption from September 9, 2009, through December 31, 2009, the Department will instruct CBP to assess countervailing duties at the rates applicable to each company shown above and to liquidate such entries. Entries of certain oven racks occurring before September 9, 2009, were already liquidated at the time of the CVD order due to the ITC's finding of threat of material injury on certain oven racks. *See CVD Order,* 74 FR at 46974–75.

Refrigeration Shelving

For certain refrigeration shelving from the PRC entered, or withdrawn from warehouse, for consumption from January 7, 2009, through May 6, 2009, and September 9, 2009, through December 31, 2009, the Department will instruct CBP to assess countervailing duties at the rates applicable to each company shown above and to liquidate such entries. Entries of certain refrigeration shelving occurring during the period May 7, 2009, through September 8, 2009, were not suspended for CVD purposes due to the termination of provisional measures. *See CVD Order,* 74 FR at 46974–75.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

In accordance with 19 CFR 351.310(c), interested parties may request a hearing within 30 days after the date of publication of this notice. Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

Pursuant to section 751(a)(3)(A) of the Act, the Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 30, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–26013 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Meeting—Cloud Computing Forum & Workshop IV

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: NIST announces the Cloud Computing Forum & Workshop IV to be held on November 2, 3 and 4, 2011. This workshop will provide information on the U.S. Government (USG) Cloud Computing Technology Roadmap initiative. This workshop will also provide an updated status on NIST efforts to help develop open standards in interoperability, portability and security in cloud computing. This event is open to the public. In addition, NIST invites organizations to participate as Exhibitors as described in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The Cloud Computing Forum & Workshop IV will be held November 2, 3, and 4, 2011.

ADDRESSES: On the first and second day of the event, November 2 & 3, panel discussions will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899 in the Red Auditorium of the Administration Building, Building 101. The third day, November 4, will feature workshops held at the Crown Plaza, 3 Research Court, Rockville, MD 20850. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: To submit a response to this request for exhibitors, and for further information contact Romayne Hines by e-mail at *romayne.hines@nist.gov* or by phone at (301) 975–4500.

SUPPLEMENTARY INFORMATION: NIST hosted three prior Cloud Computing Forum & Workshop events in May 2010, November 2010, and April 2011. The purpose of these workshops was to respond to the request of the Federal Chief Information Officer to NIST to lead federal efforts on standards for data portability, cloud interoperability, and security. The workshops' goals were to initiate engagement with industry to accelerate the development of cloud standards for interoperability, portability, and security; discuss the Federal Government's experience with cloud computing, report on the status of the NIST Cloud Computing efforts, launch and report progress on the NIST led initiative to collaboratively develop a USG Cloud Computing Technology Roadmap among multiple federal and

industrial stakeholders, and to advance a dialogue between these groups.

NIST invites members of the public, especially cloud computing community stakeholders to participate in this event as exhibitors. On November 2 and 3, 2011, space will be available for NIST would like to invite 30 academic, industry, and standards developing organizations to exhibit their respective cloud computing work at a demonstration booth or table which is co-located with the event. Interested organizations should contact Romayne Hines by e-mail at *romayne.hines@nist.gov* or by phone at (301) 975–4500. Exhibitors will be accepted in the order in which their responses are received. The first 30 organizations which respond will be accepted. Responses must be submitted by an authorized representative of the organization. Logistics information will be provided to accepted exhibitors. NIST will provide the exhibit location space and one work table free of charge. Exhibitors are responsible for the cost of the exhibit, including staffing and materials. NIST reserves the right to exercise its judgment in the placement of exhibits. General building security is supplied; however, exhibitors are responsible for transporting and securing exhibit equipment and materials.

All visitors to the NIST site are required to pre-register to be admitted and have appropriate government-issued photo ID to gain entry to NIST. Anyone wishing to attend this meeting must register at *http://www.nist.gov/itl/cloud/cloudworkshopiv.cfm* by close of business Wednesday, October 26, 2011.

Dated: October 4, 2011.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2011–26024 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Recreational Charter Vessel Guide and Owner Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 6, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amber Himes-Cornell, (206) 526–4221, or *Amber.Himes@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Numerous management measures have recently been proposed or implemented that affect recreational charter boat fishing for Pacific halibut off Alaska. On January 5, 2010, the National Marine Fisheries Service (NMFS) issued a final rule establishing a limited entry permit system for charter vessels in the guided halibut sport fishery in International Pacific Halibut Commission Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska) (75FR554). This permit system is intended to address concerns about the growth of fishing capacity in this fishery sector, which accounts for a substantial portion of the overall recreational halibut catch in Alaska. On March 16, 2011, a size limit on Pacific halibut caught while charter boat fishing for the 2011 fishing season was established (76FR14300). In addition, on July 22, 2011, a Halibut Catch Sharing Plan (76FR44156) was proposed that would alter the way Pacific halibut is allocated between the guided sport (*i.e.,* the charter sector) and the commercial halibut fishery.

To assess the effect of regulatory restrictions (currently in place or potential) on charter operator and owner behavior and welfare, it is necessary to obtain a better general understanding of the Alaska recreational charter boat industry. Some information useful for this purpose is already collected from existing sources, such as charter vessel logbooks administered by Alaska Department of Fish and Game (ADF&G). However, information on vessel and crew characteristics, services offered to clients, spatial and temporal aspects of their operations and fishing behavior, and costs and earnings information are generally not available from these existing data sources and thus must be collected directly from the industry through voluntary survey efforts.

In order to address this information gap, NMFS' Alaska Fisheries Science Center proposes to conduct a survey of charter vessel owners to collect annual cost and earnings data that will supplement logbook data collected by ADF&G. The proposed data collection will provide basic economic information about the charter sector, including revenues produced from different products and services provided to clients, fixed and variable operating costs and locations of purchases. These data will support improved analysis and of the effects of fisheries regulations on the charter fishing industry, information that is increasingly needed by the Council and NMFS to deal with ongoing halibut resource issues and other fishery management issues involving the charter industry.

II. Method of Collection

The method of data collection will be a survey of charter vessel owners implemented through a mailed questionnaire.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 1,200.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 4, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–25966 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 110921597–1591–01]

RIN 0648–XA636

Endangered and Threatened Species; 90-Day Finding on Petitions To Delist Coho Salmon Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We, NMFS, announce a 90-day finding on three petitions to delist coho salmon (*Oncorhynchus kisutch*) under the Endangered Species Act (ESA). We find that the petitions do not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petitions and related materials are available upon request from the Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Regional Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario, NMFS, Southwest Region Office, (562) 980–4085; or Dwayne Meadows and Kristy Beard, NMFS, Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA (16 U.S.C. 1533) contains provisions allowing interested persons to petition the Secretary of Commerce (Secretary) to add a species to, or remove a species from, the List of Endangered and Threatened Wildlife and to designate critical habitat. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

On May 9, 2011, we received a petition from Dr. Richard Gierak requesting that we delist coho salmon under the ESA. We also received two similar petitions from the Siskiyou County Water Users Association on June 9 and June 28, 2011, requesting that we delist coho salmon. The June 28 petition cites Dr. Gierak as a preparer. Both the June 9th and June 28th petitions include text that is the same as some of the text in the May 9th petition. Because we received three petitions that requested the same action within a short period of time, we are considering all three petitions jointly in making our 90-day finding.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define ''substantial information'' as the ''amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)(1)). In determining whether a petition presents substantial scientific or commercial information to list or delist a species, we take into account information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). In evaluating a petition and making a 90-day finding, our regulations require that we consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). If we find that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires the Secretary to conduct a status review of the species.

The ESA defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' (16 U.S.C. 1532(6)). A ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1532(20)). Under section 4(a)(1) of the ESA (16 U.S.C. 1533(a)(1)), a species may be determined to be threatened or endangered as a result of any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Regulations implementing the ESA instruct us to consider these same factors when determining whether to delist a species, a subspecies, or a distinct population segment (including Evolutionarily Significant Units (ESUs)) (50 CFR 424.11(d)). Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species, and taking into account efforts made by any state or foreign nation to protect such species. In addition to considering the factors listed above, the ESA implementing regulations state that a species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons: the species is extinct; the species is recovered; or subsequent investigations show the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

Analysis of the Petitions

The contents of the three petitions are largely similar and our analysis is based on a consideration of the four regulatory criteria for the minimum requirements for determining whether a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (50 CFR 424.14(b)). Our analysis of the petitions with regard to these criteria is as follows:

(1) The petitions do not clearly indicate the administrative measure recommended, and contain

inconsistencies and errors in the administrative measure being recommended (see 50 CFR 424.14(b)(2)(i)). In all three petitions, the title and a section entitled ''Statement identifying the taxon'' refer to the entire species of coho salmon; the petitions focus much discussion on coho salmon in the Klamath River, yet also variously discuss information about coho salmon in other parts of California and throughout the Western United States. It is unclear whether the petitioners recognize that coho salmon in the Klamath River basin are part of the larger Southern Oregon/Northern California Coast (SONCC) coho salmon ESU, which is listed as threatened (70 FR 37160; June 28, 2005), and that there are three other ESUs of coho salmon on the west coast that are listed as threatened or endangered under the ESA. The SONCC coho salmon ESU includes all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, and coho salmon in three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock #52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs (70 FR 37160; June 28, 2005). It is thus also unclear whether the petitioners are requesting that we delist the portion of the SONCC coho salmon ESU that is in the Klamath River basin, delist the entire SONCC coho salmon ESU, or delist coho salmon from one or more additional ESUs throughout some wider area. In addition, the petitions request removing the listing of coho salmon under the California Endangered Species Act, which we have no authority to do, and removing the proposed Federal ESA listing of coho salmon, even though the listing of the SONCC coho salmon ESU is final and not proposed (nor is there any other proposed listing of coho salmon by NMFS at the current time).

(2) The petitions do not contain detailed narrative justifications for the recommended measure of delisting, except as specifically discussed below regarding the claim that coho salmon are not native to the Klamath River basin or to various other parts of California. This is true regardless of what ESU or ESUs the petitioners might have intended to request we delist. The petitions generally argue the extinction of coho is unavoidable due to a variety of threats, the decline of ''coho can be directly attributed to Nature's whim,'' the Marine Mammal Protection Act is one of the major human activities destroying the coho population through allowing increased predation, and NMFS did not properly consider hatchery origin coho salmon in listing the SONCC coho salmon ESU. However, the information is not presented or synthesized in a manner to indicate the petitioned action may be warranted because of any of the criteria described in 50 CFR 424.11(c) and (d) (see 50 CFR 424.14(b)(2)(ii)). In fact, the petitioners describe a number of current threats to coho salmon that negatively affect the status of the species. The petitioners' argument that extinction is unavoidable is not a consideration in delisting decisions under the ESA or our implementing regulations. The petitioners' arguments that we did not properly consider hatchery origin coho salmon in listing the SONCC coho salmon ESU are incorrect as we addressed these issues in a final rule issued on June 28, 2005 (70 FR 37160). In that final rule, we concluded that the SONCC coho salmon ESU includes the three above mentioned artificial propagation programs because the available information indicated they were no more than slightly divergent from natural populations in their respective watersheds. In making these determinations, we applied our ''Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead'' (70 FR 37204; June 28, 2005).

One particular claim of the petitions deserves additional consideration here. The petitions all make the claim that coho salmon are not native to the Klamath River basin or to various other parts of California. For the Klamath River Basin, they cite the Karuk Tribal Council meeting from 2001 and California Fish and Game documents from 1913 and 2002. For other parts of California, specifically south of San Francisco, they cite a variety of references. They have a narrative justification for this claim that discusses the status of coho salmon in the relevant areas and include the references described above. Although the petitioners do not specifically cite the portion of our regulations dealing with an error at the original time of listing, which would be a factor for consideration of delisting (see 50 CFR 424.11(d)), we nevertheless consider the information they present on this claim. Here we evaluate whether the information provided by the petitioners presents substantial scientific or commercial information that this claim may be warranted. The petitioners cite a Web site as the source of the quotes provided from the Karuk Tribal Council meeting. The Web site does not contain the minutes of said meeting for us to evaluate and the quotes themselves do not provide scientific or anecdotal information on presence of coho salmon in the Klamath River Basin. The quotes that the petitioners provided from the 2002 California Department of Fish and Game report, taken from the 1913 California Fish and Game Commission report, are taken out of context. The 2002 report actually concludes the opposite of the petitioners: that coho salmon are native to the upper Klamath River system, and historically occurred there prior to hatchery stocking. The petitioners' arguments regarding coho salmon not being native to other parts of California, specifically south of San Francisco, were addressed in our 12-month finding and associated status review regarding the endangered Central California Coast ESU of coho salmon (76 FR 6383; February 4, 2011). Based on this analysis, these petitions fail to provide substantial scientific or commercial information that even this limited claim may be warranted under the ESA.

(3) The presentation of information does not provide information regarding the status of listed coho salmon over all or a significant portion of their range, except as specifically discussed above regarding the claim that coho salmon are not native to the Klamath River basin or to various other parts of California (see 50 CFR 424.14(b)(2)(iii)). Again this is true no matter what ESU or ESUs the petitioners intended to request we delist.

(4) Although the petitioners cite some published reports and provide links to some supporting documentation, some of the citations to referenced materials are incomplete (see 50 CFR 424.14(b)(2)(iv)).

Petition Finding

After reviewing all three petitions, as well as information readily available in our files, we have determined that the petitions do not present substantial scientific or commercial information indicating the petitioned action may be warranted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 3, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–26017 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA708

Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Public Meeting; Correction

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

ACTION: Addendum to the previous notice of South Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) meeting.

SUMMARY: This notice amends an earlier notice for the meeting. The SAFMC is adding an agenda item to consider wreckfish stock status and fishing level recommendations to the November 8–10 SSC meeting. The meeting will be held in Charleston, SC. See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will be held November 8–10, 2011. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Hampton Inn, 678 Citadel Haven Drive, Charleston, SC 29414; telephone: (843) 573–1200.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Kim.Iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The original noticed published in the **Federal Register** on September 19, 2011 (76 FR 57958).

Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. An earlier FRN indicated that the SSC will discuss fishery management plan (FMP) amendments under development, assessments of black sea bass and tilefish, review advancements in ABC control rule development, review planning information for assessments of Spanish mackerel and cobia to be developed in 2013, and discuss the findings of the National SSC workshop. In addition to these topics, the SSC will also be asked to review additional information on the status of South Atlantic wreckfish, and consider modifying Overfishing Levels (OFL) and Acceptable Biological Catch (ABC) recommendations if warranted.

SSC Meeting Schedule

November 8, 2011, 9 a.m.–6 p.m.
November 9, 2011, 9 a.m.–6 p.m.
November 10, 2011, 9 a.m.–3 p.m.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 3 business days prior to the meeting.

Dated: October 4, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–26042 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA755

Marine Fisheries Advisory Committee Meeting

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined under **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held October 25–27, 2011, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001; 202–737–1234.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, MAFAC Executive Director; (301) 427–8004; e-mail: *Mark.Holliday@noaa.gov.*

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete charter and summaries of prior meetings are located online at *http://www.nmfs.noaa.gov/ocs/mafac/*.

Matters To Be Considered

This agenda is subject to change.

The meeting is convened to hear presentations and discuss policies and guidance on the following topics: NMFS habitat blueprint, blue carbon initiatives, climate adaptation, NOAA Caribbean strategy, recreational fisheries regional action plans, and implementation of the Commerce and NOAA national aquaculture policies. Updates will be presented on National Ocean Policy implementation, coastal and marine spatial planning, and use of the Multipurpose Marine Cadastre; NOAA budgets; and outlooks for 2012 regulatory and science activities. The meeting will include discussion of various MAFAC administrative and organizational matters and meetings of the standing subcommittees.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Holliday, MAFAC Executive Director; 301–427–8004 by October 14, 2011.

Dated: October 4, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–26020 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA750

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (conference call).

SUMMARY: The Pacific Fishery Management Council (Pacific Council) Trawl Rationalization Regulatory Review Committee (TRREC) will convene a meeting that is open to the public.

ADDRESSES: The meeting will be held at the Embassy Suites Portland Airport, 7900 NE. 82nd Avenue, Portland, OR 97220; telephone: (503) 460–3000.

DATES: The meeting will be held Thursday, October 27, from 8 a.m. until business for the day is completed.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review regulations (a) making it permissible to stack both a limited entry trawl and fixed gear permit on a single vessel at the same time, (b) modifying the season opening date for whiting, (c) allowing vessels to carry multiple gears at the same time, and (d) modification of several identified trawl gear regulations that impair increased efficiency and selectivity. As a secondary priority, the TRREC may focus on other regulations made obsolete by implementation of the new trawl rationalization program in 2011.

Although non-emergency issues not contained in the meeting agenda may come before the TRREC for discussion, those issues may not be the subject of formal action during this meeting. TRREC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TRREC intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 3, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–25935 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA471

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Air Force (USAF), Eglin Air Force Base (Eglin AFB), to take marine mammals, by harassment, incidental to conducting air-to-surface (A–S) gunnery missions in the Gulf of Mexico (GOM). The USAF's activities are considered military readiness activities.

DATES: Effective September 26, 2011, through September 25, 2012.

ADDRESSES: A copy of the authorization, the application containing a list of the references used in this document, and NMFS' 2008 Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper or Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

The National Defense Authorization Act (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' provisions and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

NMFS originally received an application on February 13, 2003, from Eglin AFB for the taking, by harassment, of marine mammals incidental to programmatic mission activities within the Eglin Gulf Test and Training Range (EGTTR). The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB. A notice of receipt of Eglin AFB's application and Notice of Proposed IHA and request for 30-day public comment published on January 23, 2006 (71 FR 3474). A 1-year IHA was subsequently issued to Eglin AFB for this activity on May 3, 2006 (71 FR 27695, May 12, 2006).

On January 29, 2007, NMFS received a request from Eglin AFB for a renewal of its 2006–2007 IHA, which expired on May 2, 2007. This application addendum requested revisions to three components of the IHA requirements: protected species surveys; ramp-up

procedures; and sea state restrictions. A Notice of Proposed IHA and request for 30-day public comment published on May 30, 2007 (72 FR 29974). A 1-year IHA was subsequently issued to Eglin AFB for this activity on December 11, 2008 (73 FR 78318, December 22, 2008).

On February 17, 2009, NMFS received a request from Eglin AFB for a renewal of its 2008–2009 IHA, which expired on December 10, 2009. No modifications to the activity location, the mission activities, or the mitigation and monitoring measures required under the 2008–2009 IHA were requested by Eglin AFB at that time. A notice of proposed IHA with a 30-day public comment period published on October 19, 2009 (74 FR 53474). A 1-year IHA was subsequently issued to Eglin AFB for this activity on January 27, 2010 (75 FR 5045, February 1, 2010), which expired on January 26, 2011.

On May 16, 2011, NMFS received a request from Eglin AFB for a renewal of its IHA, which expired on January 26, 2011. The IHA application NMFS received on May 16, 2011, is the one considered by NMFS for the current request. Eglin AFB has not had coverage for these activities since the expiration of the IHA on January 16, 2011; however, Eglin AFB has not conducted these activities during the period without MMPA coverage and has waited to resume these training missions until a new MMPA authorization could be issued by NMFS.

A–S gunnery operations may potentially impact marine mammals at or near the water surface. Marine mammals could potentially be harassed, injured, or killed by exploding and non-exploding projectiles, and falling debris (USAF, 2002). However, based on analyses provided in the USAF's 2002 Final Programmatic EA (PEA), Eglin's Supplemental Information Request (2003), and NMFS' 2008 EA, as well as for reasons discussed in the Notice of Proposed IHA (76 FR 43267, July 20, 2011) and later in this document, NMFS concurs with Eglin AFB that gunnery exercises are not likely to result in any injury or mortality to marine mammals. Potential impacts resulting from A–S test operations include direct physical impacts (DPI) resulting from ordnance. Six marine mammal species or stocks are authorized for taking by Level B harassment incidental to Eglin AFB's A–S activities and include: dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); Atlantic bottlenose dolphin (*Tursiops truncatus*); Atlantic spotted dolphin (*Stenella frontalis*); pantropical spotted dolphin (*S. attenuata*); and spinner dolphin (*S. longirostris*).

Description of the Specified Activity

A–S gunnery missions, a ''military readiness activity'' as defined under 16 U.S.C. 703 note, involve surface impacts of projectiles and small underwater detonations with the potential to affect cetaceans that may occur within the EGTTR. These missions typically involve the use of 25-mm (0.98-in), 40-mm (1.57-in), and 105-mm (4.13-in) gunnery rounds containing, 0.0662 lb (30 g), 0.865 lb (392 g), and 4.7 lbs (2.1 kg) of explosive, respectively. Live rounds must be used to produce a visible surface splash that must be used to ''score'' the round (the impact of inert rounds on the sea surface would not be detected). The USAF has developed a 105-mm training round (TR) that contains less than 10 percent of the amount of explosive material (0.35 lb; 0.16 kg) as compared to the ''Full-Up'' (FU) 105-mm (4.13 in) round. The TR was developed as one method to mitigate effects on marine life during nighttime A–S gunnery exercises when visibility at the water surface is poor. However, the TR cannot be used in the daytime since the amount of explosive material is insufficient to be detected from the aircraft.

Water ranges within the EGTTR that are typically used for the gunnery operations are located in the GOM offshore from the Florida Panhandle (areas W–151A, W–151B, W–151C, and W–151D as shown in Figure 1–2 in Eglin's 2011 application). Data indicate that W–151A (Figure 1–3 in Eglin's application) is the most frequently used water range due to its proximity to Hurlburt Field, but activities may occur anywhere within the EGTTR.

Eglin AFB proposes to conduct these mission activities year round during both daytime and nighttime hours. Therefore, NMFS has made the IHA effective for an entire year from September 26, 2011, through September 25, 2012. However, it should be noted that the level of activity has been far lower over the past few years than that predicted to be conducted by the USAF and by NMFS in this document for two reasons. First, many of the training crew members have been engaged in other activities in other parts of the world recently. Second, land ranges are the preferred method of live-fire training. Under the previous IHA, the USAF crews did not use the water ranges due to the excellent availability of land ranges. However, if at some point in the future land ranges may become more difficult to acquire, water ranges are needed to ensure that aircrews can be fully trained. A detailed overview of the activity was provided in the Notice of Proposed IHA (76 FR 43267, July 20, 2011). No changes have been made to the proposed activities.

Comments and Responses

A notice of receipt of Eglin AFB's application and NMFS' proposal to issue an IHA to the USAF, Eglin AFB, published in the **Federal Register** on July 20, 2011 (76 FR 43267). During the 30-day public comment period, NMFS only received comments from the Marine Mammal Commission (MMC). Following are the comments from the MMC and NMFS' responses.

Comment 1: The MMC recommends that NMFS withhold issuing the IHA until the Air Force has provided a clear, step-by-step description of how it estimated the zones of exposure and associated number of takes for the sound exposure level thresholds, accounting for the multiple types and quantities of rounds to be used for representative missions.

Response: NMFS does not agree with the MMC that the IHA should not be issued until additional information regarding the zones of exposure and number of takes can be provided. The methodology and analytical approach for determining the exposure zones and estimating the number of marine mammal takes was fully explained in the 2011 IHA application, 2011 IHA Notice of Proposed IHA (76 FR 43267, July 20, 2011), as well as in the previous IHAs and supporting documents issued for this activity. Readers should refer to those documents for additional information, but a summary follows.

Three sources of information are necessary for estimating the potential impacts of in-water noise from explosive detonations on marine mammals: (1) The zone of influence, defined as the distance from the explosion to which a particular energy (dB) or pressure (psi) threshold extends; (2) the density of animals potentially occurring within the zone of influence; and (3) the number of distinct firing events. Table 6–1 in the 2011 IHA application provides the criteria and thresholds used for assessing potential noise impacts to marine mammals and Table 6–2 provides the estimated range from the detonation point to which the various thresholds extend. Threshold ranges were calculated for two seasons (summer and winter) and depth strata (80 m and 160 m) in order to reasonably bound the environmental conditions under which A–S gunnery activities may occur. As a conservative measure, the greatest range within each season and depth strata were used to estimate marine mammal takes. In addition, where dual criteria exist (*e.g.,* pressure

and energy thresholds for explosives), the criterion that resulted in the most conservative estimate (*i.e.,* largest amount of take) was used. Appendix A of the 2011 IHA application provides a more detailed explanation on how the ranges were calculated for the criteria and thresholds used in this analysis.

As discussed in section 3 of the 2011 IHA application and in the 2011 IHA Notice of Proposed IHA (76 FR 43267, July 20, 2011), marine mammal densities were derived from the Navy OPAREA Density Estimates (NODE) for the GOMEX OPAREA report, and were determined by either model-derived estimates or literature-derived estimates. In order to address potential negative bias in the underlying survey results, Eglin AFB adjusted density estimates using marine mammal submergence factors. The density estimates for marine mammals occurring in the EGTTR are provided in Table 3.

The final source of information required to conduct the analysis is the number of distinct firing events from A–S gunnery missions. The method of deriving the number of firing events may differ for energy and pressure metrics applied to explosive detonations. For energy metrics, the number of firing events is synonymous with the quantity of rounds expended because energy is proportional to the total charge weight. When utilizing energy threshold metrics, the energy released from multiple shots is evaluated as an additive exposure and, therefore, firing events must consider all shots fired. Conversely, it is not necessarily appropriate to consider pressure as additive when multiple explosions occur simultaneously or over a very short time frame, and an alternative method for estimating the number of events for use in take calculations is applied. Typically, pressure-based thresholds are based on the maximum level received by an animal in pounds per square inch (psi).

The method for estimating the number of firing events for 40 mm and 25 mm rounds, with respect to the pressure metric, is based on firing protocols. For example, these rounds are generally fired in bursts, with each burst lasting from 2 to 10 seconds. When the average cetacean density and swim speed of approximately 3 knots (1.5 m/sec) are taken into consideration, there is not enough time for new animals to enter the zone of influence within the time frame of a single burst. Therefore, marine mammals are only exposed to the peak pressure of a single round per burst within a particular zone of influence. For 40 mm rounds, a typical mission includes 64 rounds and approximately 20 rounds per burst. Based on the size of the target area and small ''miss'' distance, all rounds in a burst are expected to enter the water within 5 meters of the target. Therefore, pressure-related take calculations are based on the total number of rounds fired per year divided by 20. Similarly, for 25 mm rounds, missions typically entail 560 rounds fired in bursts of 100 rounds, and take calculations are based on the number of rounds divided by 100.

The firing protocol for 105 mm rounds does not include bursts because these rounds are fired in single shots with up to 30-second intervals between rounds, which results in approximately two rounds per minute. Therefore, an adjustment for burst quantity is not applicable and pressure-related exposure calculations are performed using all rounds expended.

Using this approach, Eglin AFB estimated the number of marine mammal takes using the adjusted density estimates for each species, the zone of influence of each type of round deployed, and the total number of events per year. The results are presented in Table 3.

Comment 2: The MMC recommends that NMFS require performance testing of mitigation measures to assess their actual effectiveness at detecting marine mammals and minimizing takes. The Navy is being asked to conduct similar evaluation programs, and doing so seems essential if our collective approach to such matters is to be considered science-based.

Response: Since the MMC did not make any specific recommendations regarding the performance testing of mitigation measures to assess their actual effectiveness at detecting marine mammals, NMFS is uncertain as to what exactly it is the MMC is recommending be done in this instance. Regarding the evaluation programs being conducted by the Navy, NMFS assumes that the MMC is referring to the effectiveness of visual observations by vessel-based marine mammal observers based on years of experience. The Navy's evaluation monitoring is in no way comparable to the activities being conducted here by Eglin AFB.

An addendum to the IHA application submitted by Eglin AFB in January 2007 explained in detail the advantages and improved effectiveness of using the Infrared Detection Sets (IDS) system over typical night-vision devices and other visual observation systems. The IDS system is capable of detecting differences in temperature from thermal energy (heat) radiated from living bodies or from reflected and scattered thermal energy. Visible light is not necessary for object detection. This system is equally effective during day or night use. For a full explanation on the IDS system and its effectiveness, please refer to the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008), Eglin AFB's 2007 application addendum, or NMFS' 2008 EA (see **ADDRESSES**). These documents also describe the effectiveness of this system at 6,000 ft (1,829 m) altitude, which was a requested change by the USAF due to safety concerns for personnel if protected species surveys were flown at lower altitudes.

Aircraft crew members are required to scan the testing area prior to the commencement of all A–S gunnery mission activities, for which optical and electronic sensors are required to be employed for target detection. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the mission will be immediately halted and relocated as necessary or suspended until the marine mammal has left the area. If relocated to another target area, the clearance procedures must be repeated. Based on the analysis of effectiveness of the observation systems, NMFS has determined that flying the pre-mission surveys at an altitude of 6,000 ft (1,829 m) is a sufficient altitude to detect the presence of marine mammals. Since gunnery mission activities will not occur prior to the completion of these surveys, it is safe to assume that any sighted marine mammals reported dead would have died from a cause other than Eglin AFB's A–S activities.

Regarding the effectiveness of differentiating between a live and a dead marine mammal during post-mission protected species surveys, unless there is significant physical damage, the operators/systems are not capable of determining between a non-moving live animal and a dead animal with no apparent physical damage. Typically, marine mammals do not exhibit the same levels of energy/heat transfer back into the environment that is associated with land animals due to their insulating fat layers. However, the USAF has stated that they would be able to see a wounded or recently killed marine mammal on or near the surface that is bleeding externally or with significant open wounds, as this would provide a heat signature that can be detected quite well by the IDS system.

Additionally, the size of the wound, time elapsed since the injury was incurred, and orientation of the animal/wound are all factors determining whether or not one could see the gunnery-type wounds (such as bullet

holes or fragmentation wounds). However, the weapons used during A–S exercises detonate on or very near the surface. According to the USAF, even if the weapon failed to detonate, gun-type projectiles lose lethal velocity within a few feet of the surface. Lastly, if a marine mammal enters the exercise area during a live-fire event, exercises would cease immediately, and the activity would either remain suspended until the area was determined to be clear of marine mammals or moved to a new area, where pre-mission surveys would be conducted before recommencing live-fire events.

Comment 3: The MMC states that until data are available that demonstrate the effectiveness of electronic detection techniques in higher sea states, authorizing incidental taking during operations conducted in such conditions is premature. Therefore, the MMC recommends that NMFS work with the USAF to design and conduct the necessary performance verification testing for electronic detection devices under the pertinent sea state conditions.

Response: For the 2008 IHA, NMFS increased the sea state restriction from 3 to 4. The reasoning for increasing the sea state limitation was fully explained in the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008) and NMFS' 2008 EA. Readers should refer to those documents for the explanation.

USAF subject matter experts have determined based on in-the-field experience, the airborne systems adequately function in a sea state of 4. Research conducted by Baldacci *et al.* (2005) indicated a sea state of 2 or 3 was pushing their system capabilities. However, Baldacci *et al.* (2005) were looking horizontally along the surface of the water, whereas the USAF is looking nearly straight down, thus improving system capabilities in higher sea states. Specific system capabilities/limitations are classified and cannot be publicly provided.

Sensor Operators are continuously scanning the area for traffic, boats, marine mammals, etc. when transiting to and from the water exercise ranges. The USAF will instruct the Sensor Operators to begin gathering additional data, such as sea state and level of difficulty in detecting objects at the different sea states, during those transits for comparison purposes, as long as doing so does not interfere with mission training activities. Beyond this new data collection effort, NMFS is uncertain what the MMC intended, as they did not provide any specific details on the types of data that should be collected or collection methods.

Description of Marine Mammals in the Area of the Specified Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. Of these 29 species of marine mammals, approximately 21 may be found within the proposed action area, the EGTTR. These species are the Bryde's whale, sperm whale, dwarf sperm whale, pygmy sperm whale, Atlantic bottlenose dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, Blainville's beaked whale (*Mesoplodon densirostris*), Cuvier's beaked whale, Gervais' beaked whale (*M. europaeus*), Clymene dolphin, spinner dolphin, striped dolphin, killer whale (*Orcinus orca*), false killer whale, pygmy killer whale, Risso's dolphin, Fraser's dolphin *(Lagenodelphis hosei*), melon-headed whale (*Peponocephala electra*), rough-toothed dolphin, and short-finned pilot whale. Of these species, only the sperm whale is listed as endangered under the Endangered Species Act (ESA) and as depleted throughout its range under the MMPA. While some of the other species listed here have depleted status under the MMPA, none of the GOM stocks of those species are considered depleted. More detailed information on these species can be found in Wursig *et al.* (2000), NMFS' 2008 EA (see **ADDRESSES**), and in the NMFS U.S. Atlantic and GOM Stock Assessment Reports (Waring *et al.,* 2009). This latter document is available at: *http://www.nefsc.noaa.gov/publications/tm/tm210/.* The West Indian manatee (*Trichechus manatus*) is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

The species most likely to occur in the area of Eglin AFB's proposed activities for which takes have been requested include: Atlantic bottlenose dolphin; Atlantic spotted dolphin; pantropical spotted dolphin; spinner dolphin; and dwarf and pygmy sperm whales. Bryde's whales, sperm whales, Risso's dolphins, Clymene dolphins, striped dolphins, Blainville's beaked whales, Cuvier's beaked whales, Gervais' beaked whales, killer whales, false killer whales, pygmy killer whales, Fraser's dolphins, rough-toothed dolphins, short-finned pilot whales, and melon-headed whales are rare in the project area and are not anticipated to be impacted by the A–S gunnery mission activities. Therefore, these species are not considered further.

For cetacean species other than the bottlenose dolphin, density estimates were derived from the Navy OPAREA Density Estimates (NODE) for the GOMEX OPAREA report (DON, 2007). Bottlenose dolphin density estimates were derived from Protected Species Habitat Modeling in the EGTTR (Garrison, 2008). A complete discussion on the abundance and density data can be found in the Notice of Proposed IHA (76 FR 43267, July 20, 2011) and Eglin AFB's IHA application.

Potential Effects of the Specified Activity on Marine Mammals

A–S gunnery operations may potentially impact marine mammals at or near the water surface. Marine mammals could potentially be harassed, injured or killed by exploding and non-exploding projectiles, and falling debris (USAF, 2002). However, based on analyses provided in the USAF's Final PEA, Eglin's Supplemental Information Request (2003), and NMFS' 2008 EA, NMFS concurs with Eglin AFB that A–S gunnery exercises are not likely to result in any injury or mortality to marine mammals.

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for this background information. However, one part of the analysis has changed since that time. That information was provided in the Notice of Proposed IHA (76 FR 43267, July 20, 2011) and is not repeated here. Table 1 in this document outlines the acoustic criteria used by NMFS when addressing noise impacts from explosives. These criteria remain consistent with criteria established for other activities in the EGTTR and other acoustic activities authorized under sections 101(a)(5)(A) and (D) of the MMPA.

TABLE 1—CURRENT NMFS ACOUSTIC CRITERIA WHEN ADDRESSING HARASSMENT FROM EXPLOSIVES

Level B Behavior	177 dB re 1 μPa^2-sec ⅓ Octave SEL (sound energy level).
Level B TTS Dual Criterion	182 dB re 1 μPa^2-sec ⅓ Octave SEL.
Level B TTS Dual Criterion	23 psi.
Level A PTS (permanent threshold shift)	205 dB re 1 μPa^2-sec SEL.

TABLE 1—CURRENT NMFS ACOUSTIC CRITERIA WHEN ADDRESSING HARASSMENT FROM EXPLOSIVES—Continued

Level A Injury (non-hearing related)	13 psi-msec.
Mortality	30.5 psi-msec.

TTS can disrupt behavioral patterns by inhibiting an animal's ability to communicate with conspecifics and interpret other environmental cues important for predator avoidance and prey capture. However, depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication.

The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear; displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than permanent threshold shift (PTS), they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not, because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to underwater detonations) as Level B Harassment, not Level A Harassment (injury).

Direct Physical Impacts (DPI)

Potential impacts resulting from A–S test operations include DPI resulting from ordnance. DPI could result from inert bombs, gunnery ammunition, and shrapnel from live missiles falling into the water. However, the possibility of DPI to marine mammals is considered highly unlikely. Therefore, the risk of injury or mortality is low. The Notice of Proposed IHA (76 FR 43267, July 20, 2011) contained a complete discussion of possible impacts from DPI on marine mammals. Impacts to marine mammals from Eglin AFB's activities are anticipated to be limited to Level B harassment in the form of temporary changes in behavior or temporary changes in hearing thresholds (*i.e.,* TTS).

Anticipated Effects on Marine Mammal Habitat

The primary source of marine mammal habitat impact is noise resulting from gunnery missions. However, the noise does not constitute a long-term physical alteration of the water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. Other sources that may affect marine mammal habitat were considered and potentially include the introduction of fuel, chaff, debris, ordnance, and chemical residues into the water column. A full description of anticipated effects on habitat was provided in the Notice of Proposed IHA (76 FR 43267, July 20, 2011). Based on that information, NMFS has determined that the A–S gunnery mission activities will not have any impact on the food or feeding success of marine mammals in the northern GOM. Additionally, no loss or modification of the habitat used by cetaceans in the GOM is expected. The activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the ITA process such that ''least practicable impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity''. The training activities described in Eglin AFB's application are considered military readiness activities.

The mitigation measures included in this IHA are the same as those required in the 2010–2011 IHA (75 FR 5045, February 1, 2010). These measures are virtually identical to the mitigation measures that were required in the 2008–2009 IHA (73 FR 78318, December 22, 2008) and the 2006 IHA (71 FR 27695, May 12, 2006). There were only three differences in the mitigation and monitoring measures between the 2006 and 2008 IHAs. Eglin AFB's 2007 application addendum requested revisions to three components of the IHA requirements: Protected species surveys, ramp-up procedures, and sea state restrictions. A discussion of the differences in the requirements can be found in the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008) and NMFS' 2008 EA (see **ADDRESSES**). The revisions to those three requirements are also included in this IHA. However, the explanations as to why Eglin AFB requested the changes and NMFS' determinations specific to those three requirements are not repeated in this document. Readers should refer to either the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008) or NMFS' 2008 EA (see **ADDRESSES**) for the full explanation.

Development of the Training Round (TR)

The largest type of ammunition used during typical gunnery missions is the 105-mm (4.13-in) round containing 4.7 lbs (2.1 kg) of high explosive (HE). This is several times more HE than that found in the next largest round (40 mm/1.57 in). As a mitigation technique, the USAF developed a 105-mm TR that contains only 0.35 lb (0.16 kg) of HE. The TR was developed to dramatically reduce the risk of harassment at night and Eglin AFB anticipates a 96 percent reduction in impact by using the 105-mm TR.

Visual Mitigation

Areas to be used in gunnery missions are visually monitored for marine mammal presence from the AC–130 aircraft prior to commencement of the mission. If the presence of one or more marine mammals is detected, the target area will be avoided. In addition, monitoring will continue during the mission. If marine mammals are detected at any time, the mission will halt immediately and relocate as necessary or be suspended until the marine mammal has left the area. Daytime and nighttime visual monitoring will be supplemented with infrared (IR) and low-light television (TV) monitoring. As nighttime visual monitoring is generally considered to be ineffective at any height, the EGTTR missions will incorporate the TR.

Ramp-Up Procedures

The rationale for requiring ramp-up procedures is that this process may allow animals to perceive steadily increasing noise levels and to react, if necessary, before the noise reaches a threshold of significance. The AC–130 gunship's weapons are used in two activity phases. First, the guns are checked for functionality and calibrated. This step requires an abbreviated period of live fire. After the guns are determined to be ready for use, the mission proceeds under various test and training scenarios. This second phase involves a more extended period of live fire and can incorporate use of one or any combination of the munitions available (25-, 40-, and 105-mm rounds). The ramp-up procedure is required for the initial gun calibration, and, after this phase, the guns may be fired in any order. Eglin and NMFS believe this process will allow marine species the opportunity to respond to increasing noise levels. If an animal leaves the area during ramp-up, it is unlikely to return while the live-fire mission is proceeding. This protocol allows a more realistic training experience. In combat situations, gunship crews would not likely fire the complete ammunition load of a given caliber gun before proceeding to another gun. Rather, a combination of guns would likely be used as required by an evolving situation. An additional benefit of this protocol is that mechanical or ammunition problems on an individual gun can be resolved while live fire continues with functioning weapons. This also diminishes the possibility of a lengthy pause in live fire, which, if greater than 10 min, would necessitate Eglin's re-initiation of protected species surveys (described next).

Other Mitigation

In addition to the development of the TR, the visual mitigation, and the ramp-up procedures already described in this document, additional mitigation measures to protect marine life were included in the 2006, 2008, 2009, and 2010 IHAs and are also required in the 2011 IHA. These requirements are:

(1) If daytime weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals and other marine life, A–S gunnery exercises must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Daytime test firing will be conducted only when sea surface conditions are sea state 4 or less on the Beaufort scale.

(2) Prior to each firing event, the aircraft crew will conduct a visual survey of the 5-nm (9.3-km) wide prospective target area to attempt to sight any marine mammals that may be present (the crew will do the same for sea turtles and Sargassum rafts). The AC–130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 6,000 ft (1,829 m). Provided marine mammals (and other protected species) are not detected, the AC–130 can then continue orbiting the selected target point as it climbs to the mission testing altitude. During the low altitude orbits and the climb to testing altitude, the aircraft crew will visually scan the sea surface within the aircraft's orbit circle for the presence of marine mammals. Primary emphasis for the surface scan will be upon the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC–130's optical and electronic sensors will also be employed for target clearance. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target and repeat the clearance procedures. If multiple firing events occur within the same flight, these clearance procedures will precede each event.

(3) The aircrews of the A–S gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (less than or equal to 12 nm (22 km)). This would potentially restrict most gunnery activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (*e.g.,* endangered sperm whales) typically reside.

(4) Observations will be accomplished using all-light TV, IR sensors, and visual means for at least 60 min prior to each exercise.

(5) Aircrews will utilize visual, night vision goggles, and other onboard sensors to search for marine mammals while performing area clearance procedures during nighttime pre-mission activities.

(6) If any marine mammals are sighted during pre-mission surveys or during the mission, activities will be immediately halted until the area is clear of all marine mammals for 60 min or the mission location relocated and resurveyed.

(7) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with NMFS and appropriate changes must be made, prior to conducting the next A–S gunnery exercise.

NMFS carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicability of implementation, and impact on the effectiveness of the military-readiness activity.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicability of implementation, and impact on the effectiveness of the military-readiness activity.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where

applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The Incidental Take Statement in NMFS' Biological Opinion on this action required certain monitoring measures to protect marine life. NMFS also imposed these same requirements, as well as additional ones, under Eglin AFB's 2006, 2008, and 2010 IHAs as they related to marine mammals. NMFS has included these same measures in the 2011 IHA. They are:

(1) The A–S gunnery mission aircrews will participate in the marine mammal species observation training. Designated crew members will be selected to receive training as protected species observers. Observers will receive training in protected species survey and identification techniques.

(2) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4,572 to 6,096 m) elevation, and then initiate a spiraling descent down to an observation altitude of approximately 6,000 ft (1,829 m) elevation. Rates of descent will occur over a 3 to 5 min time frame.

(3) Eglin will track their use of the EGTTR for test firing missions and protected species observations, through the use of mission reporting forms.

(4) A–S gunnery missions will coordinate with next-day flight activities to provide supplemental post-mission observations for marine mammals in the operations area of the previous day.

(5) A summary annual report of marine mammal observations and A–S activities will be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources either at the time of a request for renewal of an IHA or 90 days after expiration of the current IHA if a new IHA is not requested. This annual report must include the following information: (i) Date and time of each A–S gunnery exercise; (ii) a complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of A–S gunnery exercises on marine mammal populations; (iii) results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the gunnery exercises and number of marine mammals (by species if possible) that may have been harassed due to presence within the 5-nm activity zone; and (iv) a detailed assessment of the effectiveness of sensor-based monitoring in detecting marine mammals in the area of A–S gunnery operations.

(6) If any dead or injured marine mammals are observed or detected prior to testing, or injured or killed during live fire, a report must be made to NMFS by the following business day.

(7) Any unauthorized takes of marine mammals (*i.e.,* injury or mortality) must be immediately reported to NMFS and to the respective stranding network representative.

Estimated Take by Incidental Harassment

As it applies to a ''military readiness activity'', the definition of harassment is (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Only take by Level B harassment is anticipated as a result of and authorized for the A–S gunnery mission activities. The exercises are expected to only affect animals at or very near the surface of the water. Cetaceans in the vicinity of the exercises may incur temporary changes in behavior and/or temporary changes in their hearing thresholds. Based on the mitigation and monitoring measures required to be implemented (described earlier in this document), no injury or mortality of marine mammals is anticipated as a result of or authorized for the A–S gunnery mission activities.

The Notice of Proposed IHA (76 FR 43267, July 20, 2011) included an in-depth discussion of the methodology used by Eglin AFB and NMFS to estimate take by harassment incidental to the A–S gunnery exercises and the numbers of cetaceans that might be affected by the exercises. A summary is provided here.

DPI are only anticipated to affect marine species at or very near the ocean surface. As a result, in order to calculate impacts, Eglin used corrected species densities (see Table 4–23 in the USAF's Final PEA) to reflect the surface interval population, which is approximately 10 percent of densities calculated for distribution in the total water column. The impacts to marine mammals swimming at the surface that could potentially be injured or killed by projectiles and falling debris was determined to be an average of 0.2059 marine mammals per year. However, NMFS believes that the required mitigation measures would significantly reduce even these low levels.

In addition to small arms, Eglin calculated the potential for other non-explosive items (bombs, missiles, and drones) to impact marine mammals. As shown in the 2002 Final PEA and the Notice of Proposed IHA (74 FR 53474, October 19, 2009), the potential for any non-small arms/non-gunnery DPI to marine mammals is extremely remote and can, therefore, be discounted.

Similar to non-small arms/non-gunnery DPI, DPI from gunnery activities may also affect marine mammals in the surface zone. Again, DPI are anticipated to affect only marine mammals at or near the ocean surface. Accordingly, the density estimates have been adjusted to indicate surface animals only being potentially affected. DPI from gunnery activities are extremely remote and can be discounted. Using the largest round (105 mm), it would take approximately 120 years to impact a marine mammal from daytime gunnery activities and approximately 27 years to impact a marine mammal from nighttime gunnery activities.

Estimating the impacts to marine mammals from underwater detonations is difficult due to complexities of the physics of explosive sound under water and the limited understanding with respect to hearing in marine mammals. Detailed assessments were made in the notice for the 2006 and 2008 IHAs on this action (71 FR 27695, May 12, 2006; 73 FR 78318, December 22, 2008), as well as the Notice of Proposed IHA (74 FR 53474, October 19, 2009) and are summarized in this document. These assessments used, and improved upon, the criteria and thresholds for marine mammal impacts that were developed for the shock trials of the *USS SEAWOLF* and the *USS WINSTON S. CHURCHILL* (DDG–81) (Navy, 1998; 2001). The criteria and thresholds used in those actions were adopted by NMFS for use in calculating incidental takes from explosives. Criteria for assessing impacts from Eglin AFB's A–S gunnery exercises include: (1) Mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing

related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions.

Permanent hearing loss is considered an injury and is termed PTS. NMFS, therefore, categorizes PTS as Level A harassment. Temporary loss of hearing ability is termed TTS, meaning a temporary reduction of hearing sensitivity which abates following noise exposure. TTS is considered non-injurious and is categorized as Level B harassment. NMFS recognizes dual criteria for TTS, as well as for Level A harassment, one based on peak pressure and one based on the greatest ⅓ octave sound exposure level (SEL) or energy flux density level (EFDL), with the more conservative (*i.e.,* larger) of the two criteria being selected for impacts analysis (note: SEL and EFDL are used interchangeably, but with increasing scientific preference for SEL). The peak pressure metric used in previous shock trials to represent TTS was 12 pounds per square inch (psi) which, for the net explosive weight used, resulted in a zone of possible Level B harassment approximately equal to that obtained by using a 182 decibel (dB) re 1 microPa^2-s, total EFDL/SEL metric. The 12-psi metric is largely based on anatomical studies and extrapolations from terrestrial mammal data (see Ketten, 1995; Navy, 1999 (Appendix E, CHURCHILL FEIS; and 70 FR 48675 (August 19, 2005)) for background information). However, the results of a more recent investigation involving marine mammals suggest that, for small charges, the 12-psi metric is not an adequate predictor of the onset of TTS but that one should use 23 psi. This explanation was provided in the Notice of Proposed IHA (76 FR 43267, July 20, 2011).

Table 1 (earlier in this document) summarizes the relevant thresholds for levels of noise that may result in Level A harassment (injury) or Level B harassment via TTS or behavioral disturbance to marine mammals. Mortality and injury thresholds are designed to be conservative by considering the impacts that would occur to the most sensitive life stage (*e.g.,* a dolphin calf). Table 2 provides the estimated ZOI radii for the EGTTR ordnance.

TABLE 2—ESTIMATED RANGE FOR A ZONE OF IMPACT (ZOI) DISTANCE FOR THE EGTTR ORDNANCE

Expendable	Level A harassment—injurious (205 dB) EFD (m)	Level B harassment non-injurious (182 dB) EFD for TTS (m)	Level B harassment non-injurious (23 psi) for TTS (m)	Level B harassment—non-injurious (177 dB) EFD for behavior (m)
105-mm FU	0.79	11.1	216	22.1
105-mm TR	0.22	3.0	90	6.0
40-mm HE	0.33	4.7	122	9.4
25-mm HE	0.11	1.3	49	2.6

FU = Full-up; TR = Training Round; HE = High Explosive.

Based on the detailed discussion contained in the Notice of Proposed IHA (76 FR 43267, July 20, 2011), Table 3 in this **Federal Register** document provides Eglin AFB's estimates of the annual number of marine mammals, by species, potentially taken by Level B harassment, by the gunnery mission noise. It should be noted that these estimates are derived without consideration of the effectiveness of the required mitigation measures (except use of the TR), which are discussed earlier in this document. As indicated in Table 3, Eglin AFB and NMFS estimate that approximately 212 marine mammals may incur Level B (TTS) harassment annually. Because these gunnery exercises result in multiple detonations, they have the potential to also result in a temporary modification in behavior by marine mammals at levels below TTS. Based on Eglin AFB and NMFS' estimates, up to 694 marine mammals may experience a behavioral response to these exercises during the time frame of an IHA (see Table 3). Finally, while one would generally expect the threshold for behavioral modification to be lower than that causing TTS, due to a lack of empirical information and data, a dual criteria for Level B behavioral harassment cannot be developed. However, to ensure that takings are covered by this IHA, NMFS estimates that approximately 906 marine mammals of five stocks may incur Level B (harassment) takes during the 1-year period of an IHA. NMFS has determined that this number will be significantly lower due to the expected effectiveness of the mitigation measures required in the IHA.

TABLE 3—YEARLY ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY THE GUNNERY MISSION NOISE

Species	Adjusted Density (#/km^2)	Level A harassment injurious 205 dB * EFD for ear rupture	Level B harassment non-injurious 182 dB * EFD For TTS	Level B harassment non-injurious 23 psi For TTS	Level B harassment non-injurious 177 dB * EFD for behavior
Bryde's whale	0.0	0.0	0.0	0.0	0.0
Sperm whale	0.0	0.0	0.0	0.0	0.0
Dwarf/pygmy sperm whale	0.0	0.0	0.4	0.0	1.3
All beaked whales	0.0	0.0	0.0	0.0	0.0
Killer whale	0.0	0.0	0.0	0.0	0.0
Pygmy killer whale	0.0	0.0	0.0	0.0	0.0
False killer whale	0.0	0.0	0.0	0.0	0.0
Melon-headed whale	0.0	0.0	0.0	0.0	0.0
Short-finned pilot whale	0.0	0.0	0.0	0.0	0.0
Rough-toothed dolphin	0.0	0.0	0.0	0.0	0.0
Bottlenose dolphin	0.6	0.0	134.9	17.8	442.9
Risso's dolphin	0.0	0.0	0.0	0.0	0.0

TABLE 3—YEARLY ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY THE GUNNERY MISSION NOISE—Continued

Species	Adjusted Density (#/km^2)	Level A harassment injurious 205 dB* EFD for ear rupture	Level B harassment non-injurious 182 dB* EFD For TTS	Level B harassment non-injurious 23 psi For TTS	Level B harassment non-injurious 177 dB* EFD for behavior
Atlantic spotted dolphin	0.3	0.0	75.2	9.9	246.9
Pantropical spotted dolphin	0.1	0.0	0.3	0.0	11.1
Striped dolphin	0.0	0.0	0.0	0.0	0.2
Spinner dolphin	0.1	0.0	0.3	0.0	0.9
Clymene dolphin	0.0	0.0	0.1	0.0	0.3
Fraser's dolphin	0.0	0.0	0.0	0.0	0.0
All marine mammals	1.3	0.0	211.5	27.9	694.2

km^2 = square kilometers; NA = not applicable
*dB = dB re 1 μPa^2 – s.

Negligible Impact Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Eglin AFB's A–S gunnery mission activities, and none are authorized. Takes will be limited to Level B harassment in the form of behavioral disturbance and TTS. Although activities would be permitted to occur year-round and can last for approximately 5 to 6 hours at a time, the actual live-fire portion of the exercise usually only lasts for 90 to 120 min; therefore, NMFS expects the duration of impacts to be relatively short. Additionally, it should also be noted that the actual level of activity has been far lower over the past few years than that predicted and estimated in this document. Those reasons were discussed earlier in this document. It is possible that some individuals may be taken more than once if those individuals are located in the exercise area on two different days when exercises are occurring. However, multiple exposures are not anticipated to have effects beyond Level B harassment.

Of the 21 marine mammal species or stocks that may be in the vicinity of the EGTTR gunnery mission activities, only the sperm whale is listed as endangered under the ESA and as depleted under the MMPA. Sperm whale occurrence in the area of the proposed activity is unlikely because almost all reported sightings have occurred in water depths greater than 200 m. Occurrence in the deeper portions of W–151 is possible, although based on reported sighting locations, density is expected to be low. Therefore, Eglin AFB has not requested and NMFS has not issued take authorizations for this species. No mortality or injury is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

Additionally, the mitigation and monitoring measures required to be implemented (described earlier in this document) are expected to minimize even further the potential for injury or mortality. The protected species surveys require Eglin AFB to search the area for marine mammals, and if any are found in the live fire area, then the exercise must be suspended until the animal(s) has left the area or the activity relocated. Moreover, the aircrews of the A–S gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (less than or equal to 12 nm (22 km)). This would potentially restrict most gunnery activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (*e.g.,* endangered sperm whales) typically reside.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Eglin AFB's A–S gunnery mission exercises will result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the A–S gunnery mission exercises will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

A Biological Opinion issued by NMFS on October 20, 2004, concluded that the A–S gunnery exercises in the EGTTR are unlikely to jeopardize the continued existence of species listed under the ESA that are within the jurisdiction of NMFS or destroy or adversely modify critical habitat. NMFS has determined that this action, including the modifications to the mitigation and monitoring measures in the 2008 IHA and included in the 2010 IHA, does not have effects beyond that which was analyzed in that previous consultation, it is within the scope of that action, and reinitiation of consultation is not necessary.

National Environmental Policy Act (NEPA)

The USAF prepared a Final PEA in November 2002 for the EGTTR activity. NMFS made the USAF's 2002 Final PEA available upon request on January 23, 2006 (71 FR 3474). In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in the USAF's 2002 Final PEA, and, on May 1, 2006, determined that the document accurately and completely described the proposed action, the alternatives to the proposed action, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted the USAF's 2002 Final PEA under 40 CFR 1506.3 and made its own FONSI on May 16, 2006. The

NMFS FONSI also took into consideration updated data and information contained in NMFS' **Federal Register** document noting issuance of an IHA to Eglin AFB for this activity (71 FR 27695, May 12, 2006), and previous notices (71 FR 3474, January 23, 2006; 70 FR 48675, August 19, 2005).

As the issuance of the 2008 IHA to Eglin AFB amended three of the mitigation measures for reasons of practicality and safety, NMFS reviewed the USAF's 2002 Final PEA and determined that a new EA was warranted to address: (1) The proposed modifications to the mitigation and monitoring measures; (2) the use of 23 psi as a change in the criterion for estimating potential impacts on marine mammals from explosives; and (3) a cumulative effects analysis of potential environmental impacts from all GOM activities (including Eglin mission activities), which was not addressed in the USAF's 2002 Final PEA. Therefore, NMFS prepared a new EA in December 2008 and issued a FONSI for its action on December 9, 2008. Based on those findings, NMFS determined that it was not necessary to complete an environmental impact statement for the issuance of an IHA to Eglin AFB for this activity. NMFS has determined that this activity is within the scope of NMFS' 2008 EA and FONSI.

Authorization

As a result of these determinations, NMFS has issued an IHA to the USAF, Eglin AFB, for the take of several species of marine mammals incidental to the A–S gunnery mission activities in the GOM provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 26, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–26018 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Public User ID Badging

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 6, 2011.

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

- *E-mail: InformationCollection@uspto.gov.* Include ''0651–0041 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding online access cards or user training should be directed to Douglas Salser, Acting Manager, Public Search Facility, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–5595; or by e-mail to *Douglas.Salser@uspto.gov.*

Requests for additional information regarding security identification badges should be directed to Joseph Burns, Director, Security Office, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–1537; or by e-mail to *Joseph.Burns@uspto.gov.*

Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility to provide patent and trademark collections for searching and retrieval of information. The Public Search Facility is maintained for public use with paper and electronic search files and trained staff to assist searchers. The USPTO also offers training courses to assist the public with using the advanced electronic search systems available at the facility.

In order to manage the patent and trademark collections that are available to the public, the USPTO issues online access cards to customers who wish to use the electronic search systems at the Public Search Facility. Customers may obtain an online access card by completing the application at the Public Search Facility reference desk and providing proper identification. The plastic online access cards include a bar-coded user number and an expiration date. Users may renew their cards by validating and updating the required information and may obtain a replacement for a lost card by providing proper identification.

Under the authority provided in 41 CFR 102–81, the USPTO issues security identification badges to members of the public who wish to use the facilities at the USPTO. Public users may apply for a security badge in person at the USPTO Office of Security by providing the necessary information and presenting a valid form of identification with photograph. The security badges include a color photograph of the user and must be worn at all times while at the USPTO facilities.

In January 2011, the USPTO discontinued the $120 fee for users requesting private instruction for the online search systems available at the Public Search Facility. Therefore, the private instruction fee is being deleted from this collection.

II. Method of Collection

The applications for online access cards and security identification badges are completed on site and handed to a USPTO staff member for issuance. User training registration forms may be mailed, faxed, or hand delivered to the USPTO.

III. Data

OMB Number: 0651–0041.

Form Number(s): PTO–2030 and PTO–2224.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 10,003 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public approximately five to ten minutes (0.08 to 0.17 hours) to complete the information in this collection, including gathering the necessary information, preparing the appropriate form, and submitting the completed request.

Estimated Total Annual Respondent Burden Hours: 989 hours.

Estimated Total Annual Respondent Cost Burden: $191,866. The USPTO estimates that approximately ⅓ of the users responding to this collection are attorneys and ⅔ are paraprofessionals. Using ⅓ of the professional rate of $340 per hour for attorneys in private firms

and ⅔ of the paraprofessional rate of $122 per hour, the estimated rate for respondents to this collection is approximately $194 per hour. Using this estimated rate of $194 per hour, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be approximately $191,866 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Application for Public User ID (Online Access Card) (PTO–2030)	5	2,330	186
Issue Online Access Card	10	2,095	356
Renew Online Access Card	5	1,059	85
Replace Online Access Card	5	145	12
User Training Registration Forms	5	74	6
Security Identification Badges for Public Users (PTO–2224)	5	1,000	80
Renew Security Identification Badges for Public Users	5	3,200	256
Replace Security Identification Badge	5	100	8
Totals		10,003	989

Estimated Total Annual Non-hour Respondent Cost Burden: $1,502. This collection has annual (non-hour) costs in the form of fees and postage costs.

There are no application or renewal fees for online access cards or security identification badges. However, there is a $15 fee for issuing a replacement security identification badge. The USPTO estimates that it will reissue approximately 100 security badges annually that have been lost, stolen, or need to be replaced, for a total of $1,500 per year in fees.

Users may incur postage costs when submitting a user training registration form to the USPTO by mail. The USPTO expects that approximately 4 of the estimated 74 training forms received per year will be submitted by mail. The USPTO estimates that the average first-class postage cost for a mailed training form will be 44 cents, for a total postage cost of approximately $2 per year for this collection.

The total annual (non-hour) respondent cost burden for this collection in the form of fees and postage costs is estimated to be $1,502 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 4, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–26014 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2011–0060]

Notice of Public Hearing and Request for Comments on the Study of Prior User Rights

The United States Patent and Trademark Office (USPTO) is interested in gathering information on patent prior user rights for purposes of preparing a report on the subject as required by the America Invents Act. In particular, the USPTO seeks information about the following as specified in the America Invents Act: (1) Comparison(s) between the patent laws of the United States and the laws of other industrialized countries; (2) the effect of prior user rights on innovation rates; (3) the correlation, if any, between prior user rights and start-up enterprises as well as the ability to attract venture capital to start new companies; (4) the effect of prior user rights, if any, on small businesses, universities, and individual inventors; (5) legal and constitutional issues with placing trade secret law in patent law; and (6) whether or not the change to a first-to-file patent system creates any particular need for prior user rights. To assist in gathering this information, the USPTO is holding a public hearing at which interested members of the public are invited to testify on the issues outlined above and in the supplementary information section of this notice. In addition, members of the public may submit written comments.

Public Hearing: A public hearing will be held on Tuesday, October 25, 2011, beginning at 8:30 a.m. Eastern Daylight Time (EDT) and ending at 11:30 a.m. EDT. The public hearing will be held at the USPTO, Madison Auditorium, Concourse Level, Madison Building, 600 Dulany Street, Alexandria, Virginia 22314.

Those wishing to present oral testimony at the hearing must request an opportunity to do so in writing by e-mail to *IP.Policy@uspto.gov* no later than October 18, 2011. Requests to testify at the hearing must indicate the following information: (1) The name of the person desiring to testify; (2) the person's contact information (telephone number and electronic mail address); and (3) the organization(s) the person represents, if any; and (4) a preliminary written copy of their testimony. Based on the requests received, an agenda of scheduled testimony will be sent to testifying respondents, and posted on the USPTO Internet Web site (address: *http://www.uspto.gov/americainventsact*).

Speakers selected to provide testimony at the hearing should provide a final written copy of their testimony for inclusion in the record of the proceedings no later than October 21, 2011.

The USPTO plans to make the public hearing available via webcast. Webcast information will be available on the USPTO's Internet Web site (address: *http://www.uspto.gov/americainventsact*) before the public hearing.

Written Comments: Written comments should be sent by e-mail to *IP.Policy@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop OPEA, P.O. Box 1450, Alexandria, VA 22313–1450, ATTN: Elizabeth Shaw. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via e-mail. The deadline for receipt of written comments for consideration by the USPTO is November 8, 2011. Written comments should be identified in the subject line of the e-mail or postal mailing as ''Prior User Rights.''

Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

Availability of Hearing Transcript and Written Comments: A transcript of the hearing and the written comments will be available for public inspection at the Office of Policy and External Affairs in the Executive Library located in the Madison West Building, Tenth Floor, 600 Dulany Street, Alexandria, Virginia 22314. Contact: Elizabeth Shaw at *elizabeth.shaw2@uspto.gov* or 571–272–8494. In addition, the hearing transcript and the comments from the public will also be available via the USPTO Internet Web site (address: *http://www.uspto.gov/americainventsact*).

Contact: Mary Critharis, Office of Policy and External Affairs, by phone 571–272–9300; by e-mail at *mary.critharis@uspto.gov;* or by postal mail addressed to: Mail Stop OPEA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, ATTN: Mary Critharis; or Charles Eloshway, Office of Policy and External Affairs, by phone at 571–272–9300; by e-mail at *charles.eloshway@uspto.gov;* or by postal mail addressed to: Mail Stop OPEA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, ATTN: Charles Eloshway.

The America Invents Act, Section 3, calls for the Director of the USPTO to report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives regarding findings and recommendations on the operations of prior user rights in selected countries in the industrialized world no later than the end of the four-month period beginning on the date of enactment of the Act (*i.e.,* by January 16, 2012). In preparing the report, the USPTO is required to consult with the United States Trade Representative, the Secretary of State, and the Attorney General. The Act also specifically identifies items for USPTO consideration as part of the report.

Issues for Testimony and/or Written Comment: Interested members of the public are invited to submit testimony and/or written comments on issues that they believe relevant to operation of prior user rights. The topics and questions listed below reflect the information that the USPTO is required to study per the prior user rights study provision of the America Invents Act. The tenor of the following questions should not be taken as an indication that the USPTO has taken a position or is predisposed to any particular views.

1a. Please share your experiences relating to the use of prior user rights in foreign jurisdictions including, but not limited to, members of the European Union and Japan, Canada, and Australia.

In doing so, please include the following:

(a) An identification of the foreign jurisdiction(s);

(b) The frequency or regularity with which prior user rights were utilized or asserted in the particular jurisdiction(s);

(c) Whether prior user rights were asserted as a defense by you or your organization;

(d) Whether another entity alleged prior user rights as a defense to a patent infringement claim asserted by you or your organization;

(e) The technology or industry involved;

(f) The operation of the prior user rights regime in the particular jurisdiction(s); and

(g) The advantages/disadvantages of the prior user rights regime in the particular jurisdiction(s).

1b. If you do not have any experiences relating to the use of prior user rights in foreign jurisdictions, please identify the following:

(a) The frequency or regularity with which you engage in business abroad including, but limited to, the following foreign economies: members of the European Union and Japan, Canada, and Australia;

(b) Your opinion as to why you believe prior user rights are or are not needed in the particular jurisdiction(s).

2. Please share your experiences in analyzing the effect, if any, of prior user rights on innovation rates in selected countries including, but not limited to, members of the European Union and Japan, Canada, and Australia. Please include empirical and anecdotal data, as well as opinions as to how this analysis may be conducted.

3. Please share your experiences in analyzing the correlation, if any, between prior user rights and start-up enterprises and the ability to attract venture capital to start new companies. Please include empirical and anecdotal data, as well as opinions as to how this analysis may be conducted.

4. Please share your experiences in analyzing the effect, if any, of prior user rights on small businesses, universities, and individual inventors. Please include empirical and anecdotal data, as well as opinions as to how this analysis may be conducted.

5. Please share your views, along with any corresponding analysis, as to whether there are any legal or constitutional issues with placing trade secret law in United States patent law.

6. Please share your views, along with any corresponding analysis, as to whether the change to a first-to-file patent system creates any particular need for prior user rights in the United States.

Dated: October 4, 2011.

David J. Kappos,

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

[FR Doc. 2011–26154 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2011–0062]

Request for Comments and Notice of Public Hearings on the Study of International Patent Protection for Small Businesses

The United States Patent and Trademark Office (USPTO) is interested in gathering information on international patent protection for small businesses for purposes of preparing a report on the subject as required by the America Invents Act. To assist in gathering this information, the USPTO is holding a public hearing at which interested members of the public are invited to testify on this topic. In addition, members of the public may submit written comments.

Public Hearing: The USPTO will hold two hearings in support of the study of international patent protection for small businesses. The first public hearing will be held on October 27, 2011, beginning at 1 p.m. Eastern Daylight Time (EDT) and ending at 4 p.m. EDT. The first public hearing will be held at the USPTO in the Madison Auditorium on the concourse level of the Madison

Building, located at 600 Dulany Street, Alexandria, Virginia 22314. The second public hearing will be held on November 1, 2011, beginning at 9 a.m. Pacific Daylight Time (PDT) and ending at 12 p.m. PDT. The second public hearing will be held at the University of Southern California in the Gould School of Law, located at 699 Exposition Boulevard, Los Angeles, California 90089.

Those wishing to present oral testimony at the hearing must request an opportunity to do so in writing by e-mail to *SMEpatenting@uspto.gov* no later than October 20, 2011, for the first public hearing, and no later than October 25, 2011, for the second public hearing. Requests to testify at the hearing must indicate the following information: (1) The name of the person desiring to testify; (2) the person's contact information (telephone number and electronic mail address); (3) the organization(s) the person represents, if any; and (4) a preliminary written copy of their testimony. Based on the requests received, an agenda of scheduled testimony will be sent to testifying respondents, and posted on the USPTO Internet Web site (address: *http://www.uspto.gov/americainventsact*).

Speakers selected to provide testimony at the hearing should provide a final written copy of their testimony for inclusion in the record of the proceedings no later than October 21, 2011.

The USPTO plans to make the public hearing available via webcast. Webcast information will be available on the USPTO's Internet Web site (address: *http://www.uspto.gov/americainventsact*) before the public hearing.

Written Comments: Written comments should be sent by e-mail to *SMEpatenting@uspto.gov.* Comments may also be submitted by postal mail addressed to: Saurabh Vishnubhakat, Attorney Advisor, Office of Chief Economist, United States Patent and Trademark Office, Mail Stop External Affairs, P.O. Box 1450, Alexandria, VA 22313–1450. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via e-mail. The deadline for receipt of written comments for consideration by the USPTO is November 8, 2011. Written comments should be identified in the subject line of the e-mail or postal mailing as ''International Patent Protection for Small Businesses.''

Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

Availability of Hearing Transcript and Written Comments: A transcript of the hearing and the written comments will be available for public inspection at the Office of Chief Economist, located in the Madison West Building, Tenth Floor, 600 Dulany Street, Alexandria, Virginia 22314. In addition, the hearing transcript and the comments from the public will also be available via the USPTO Internet Web site (address: *http://www.uspto.gov/americainventsact*).

Contact: Saurabh Vishnubhakat, Office of Chief Economist, by telephone 571–272–3427; by e-mail at *saurabh.vishnubhakat@uspto.gov;* or by postal mail addressed to: Saurabh Vishnubhakat, Office of Chief Economist, United States Patent and Trademark Office, Madison West Building, Tenth Floor, 600 Dulany Street, Alexandria, Virginia 22314.

The America Invents Act, Section 31, charges the Director of the United States Patent and Trademark Office (USPTO), in consultation with the Secretary of Commerce and the Administrator of the Small Business Administration, with delivering a study no later than 120 days after the enactment of the Act (*i.e.,* by January 14, 2012) on how the USPTO, in coordination with other Federal departments and agencies, can best help small businesses with international patent protection. The USPTO therefore broadly seeks comments on how to address the issue of international patent protection for small businesses and whether a revolving fund loan program or a grant program should be established to pay for the costs of filing, maintaining, and enforcing international patent protection.

Issues for Testimony and/or Written Comment: Interested members of the public are invited to submit testimony and/or written comments on issues that they believe relevant to international patent protection for small businesses. The questions enumerated below are a preliminary guide for gathering comments on the potential legislative strategies that the USPTO should recommend to Congress. The public is invited to answer any or all of these questions. The tenor of the following questions should not be taken as an indication that the USPTO has taken a position or is predisposed to any particular views.

1. Overall, how important is international patent protection to small business?

2. At what point, if ever, in the growth of small companies does international patent protection become important?

3. What challenges, if any, interfere with the growth and competitiveness of small companies if international patent protection is not sought early in the innovation process?

4. What specific role does international patent protection play in the successful internationalization strategies (such as franchising, exporting, or foreign-direct-investment) of small businesses? Does this role differ by industry or sector?

5. How can the USPTO and other Federal agencies best support small businesses regarding international patents:

(a) In obtaining international patent rights?

(b) In maintaining international patent rights?

(c) In enforcing international patent rights?

6. What role should the Federal Government play in assisting small businesses to defray the costs of filing, maintaining, and enforcing international patent protection?

7. In order to help small businesses pay for the costs of filing, maintaining, and enforcing international patent applications, how effective would it be to establish a revolving fund loan program to make loans to small businesses to defray the costs of such applications, maintenance, and enforcement and related technical assistance?

(a) Under what specific circumstances, if at all, would such a fund be effective at helping small businesses?

(b) If such a fund would be effective, should the fund be maintained by the Federal Government, and if so, through what mechanism?

(c) What criteria should be used to decide upon recipients of funding?

(d) Could the private sector be meaningfully involved in maintaining and implementing such a fund?

8. In order to help small businesses pay for the costs of filing, maintaining, and enforcing international patent applications, how effective would it be to establish a grant program to defray the costs of filing applications, paying maintenance fees, and conducting enforcement and to provide related technical assistance?

(a) Under what circumstances, if at all, would such a program be effective at helping small businesses?

(b) If such a grant program would be effective, should the program be maintained by the Federal Government, and if so, through what mechanism?

What type of grant program, covering what specific costs, would be most effective?

(c) What criteria should be used to decide upon recipients of grants?

(d) Could the private sector be meaningfully involved in maintaining and implementing such a program?

9. If the Federal Government is limited to providing either (i) A revolving fund loan program or (ii) a grant program described above, but not both, which of these options would be more effective in accomplishing the outcome of helping small businesses pay for the costs of filing, maintaining, and enforcing international patent applications?

10. Are there circumstances under which the Federal Government should not consider establishing any of these programs?

Dated: October 4, 2011.

David J. Kappos,

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

[FR Doc. 2011–26157 Filed 10–6–11; 8:45 am]

BILLING CODE 3510–10–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services previously furnished by such agencies.

DATES: *Comments Must Be Received On Or Before:* 11/7/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C 8501–8506) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Navy Retired Lapel Pin

NSN: 8455–01–591–5248—Lapel Pin, Navy Retired, Dual Flag
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Defense Logistics Agency, DLA Troop Support, Philadelphia, PA
Coverage: C-List for 100% of the requirement of the Department of the Navy, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Gloves, Surgical

NSN: 6515–00–NIB–0627—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 5.5″
NSN: 6515–00–NIB–0628—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 6″
NSN: 6515–00–NIB–0629—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 6.5″
NSN: 6515–00–NIB–0630—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 7″
NSN: 6515–00–NIB–0631—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 7.5″
NSN: 6515–00–NIB–0632—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 8″
NSN: 6515–00–NIB–0633—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 8″
NSN: 6515–00–NIB–0634—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 9″
NSN: 6515–00–NIB–0635—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 5.5″
NSN: 6515–00–NIB–0636—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 6″
NSN: 6515–00–NIB–0637—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 6.5″
NSN: 6515–00–NIB–0638—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 7″
NSN: 6515–00–NIB–0639—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 7.5″
NSN: 6515–00–NIB–0640—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 8″
NSN: 6515–00–NIB–0641—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 8.5″
NSN: 6515–00–NIB–0642—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 9″
NSN: 6515–00–NIB–0643—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 5.5″
NSN: 6515–00–NIB–0644—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 6″
NSN: 6515–00–NIB–0645—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 6.5″
NSN: 6515–00–NIB–0646—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 7″
NSN: 6515–00–NIB–0647—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 7.5″
NSN: 6515–00–NIB–0648—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 8″
NSN: 6515–00–NIB–0649—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 8.5″
NSN: 6515–00–NIB–0650—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 9″
NSN: 6515–00–NIB–0651—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 5.5″
NSN: 6515–00–NIB–0652—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 6″
NSN: 6515–00–NIB–0653—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 6.5″
NSN: 6515–00–NIB–0654—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 7″
NSN: 6515–00–NIB–0655—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown,

Size 7.5″
NSN: 6515–00–NIB–0656—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 8″
NSN: 6515–00–NIB–0657—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 8.5″
NSN: 6515–00–NIB–0658—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 9″
NSN: 6515–00–NIB–0659—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 6″
NSN: 6515–00–NIB–0660—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 6.5″
NSN: 6515–00–NIB–0661—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 7″
NSN: 6515–00–NIB–0662—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 7.5″
NSN: 6515–00–NIB–0663—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 8″
NSN: 6515–00–NIB–0664—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 8.5″
NSN: 6515–00–NIB–0665—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 9″
NSN: 6515–00–NIB–0666—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 5.5″
NSN: 6515–00–NIB–0667—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 6″
NSN: 6515–00–NIB–0668—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 6.5″
NSN: 6515–00–NIB–0669—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 7″
NSN: 6515–00–NIB–0670—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 7.5″
NSN: 6515–00–NIB–0671—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 8″
NSN: 6515–00–NIB–0672—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 8.5″
NSN: 6515–00–NIB–0673—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 9″
NSN: 6515–00–NIB–0674—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 5.5″
NSN: 6515–00–NIB–0675—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 6″
NSN: 6515–00–NIB–0676—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 6.5″
NSN: 6515–00–NIB–0677—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 7″
NSN: 6515–00–NIB–0678—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 7.5″
NSN: 6515–00–NIB–0679—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 8″
NSN: 6515–00–NIB–0680—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 8.5″
NSN: 6515–00–NIB–0681—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 9″
NSN: 6515–00–NIB–0682—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 5.5″
NSN: 6515–00–NIB–0683—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 6″
NSN: 6515–00–NIB–0684—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 6.5″
NSN: 6515–00–NIB–0685—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 7″
NSN: 6515–00–NIB–0686—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 7.5″
NSN: 6515–00–NIB–0687—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 8″
NSN: 6515–00–NIB–0688—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 8.5″
NSN: 6515–00–NIB–0689—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 9″
NSN: 6515–00–NIB–0690—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 5.5″
NSN: 6515–00–NIB–0691—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 6″
NSN: 6515–00–NIB–0692—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 6.5″
NSN: 6515–00–NIB–0693—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 7″
NSN: 6515–00–NIB–0694—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 7.5″
NSN: 6515–00–NIB–0695—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 8″
NSN: 6515–00–NIB–0696—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 8.5″
NSN: 6515–00–NIB–0697—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 9″
NSN: 6515–00–NIB–0698—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 5.5″
NSN: 6515–00–NIB–0699—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 6″
NSN: 6515–00–NIB–0700—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 6.5″
NSN: 6515–00–NIB–0701—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 7″
NSN: 6515–00–NIB–0702—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 7.5″
NSN: 6515–00–NIB–0703—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 8″
NSN: 6515–00–NIB–0704—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 8.5″
NSN: 6515–00–NIB–0705—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 9″
NSN: 6515–00–NIB–0706—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 5.5″
NSN: 6515–00–NIB–0707—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 6″
NSN: 6515–00–NIB–0708—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 6.5″
NSN: 6515–00–NIB–0709—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 7″
NSN: 6515–00–NIB–0710—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 7.5″
NSN: 6515–00–NIB–0711—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 8″
NSN: 6515–00–NIB–0712—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 8.5″
NSN: 6515–00–NIB–0713—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 9″
NSN: 6515–00–NIB–0773—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 5.5″
NSN: 6515–00–NIB–0714—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 6″
NSN: 6515–00–NIB–0715—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 6.5″
NSN: 6515–00–NIB–0716—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 7″
NSN: 6515–00–NIB–0717—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 7.5″
NSN: 6515–00–NIB–0718—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 8.0″
NSN: 6515–00–NIB–0719—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 8.5″
NSN: 6515–00–NIB–0720—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 9″
NSN: 6515–00–NIB–0721—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 5.5″
NSN: 6515–00–NIB–0722—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 6″
NSN: 6515–00–NIB–0723—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 6.5″
NSN: 6515–00–NIB–0724—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 7″
NSN: 6515–00–NIB–0725—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 7.5″
NSN: 6515–00–NIB–0774—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 8″
NSN: 6515–00–NIB–0726—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 8.5″
NSN: 6515–00–NIB–0727—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 9″
NSN: 6515–00–NIB–0728—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 6.0″
NSN: 6515–00–NIB–0729—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 6.5″
NSN: 6515–00–NIB–0730—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 7″

NSN: 6515–00–NIB–0731—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 7.5″
NSN: 6515–00–NIB–0732—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 8″
NSN: 6515–00–NIB–0733—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 8.5″
NSN: 6515–00–NIB–0734—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 9″
NSN: 6515–00–NIB–0735—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 6″
NSN: 6515–00–NIB–0736—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 6.5″
NSN: 6515–00–NIB–0737—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 7″
NSN: 6515–00–NIB–0738—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 7.5″
NSN: 6515–00–NIB–0739—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 8″
NSN: 6515–00–NIB–0740—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 8.5″
NSN: 6515–00–NIB–0741—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 9″
NSN: 6515–00–NIB–0742—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 6″
NSN: 6515–00–NIB–0743—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 6.5″
NSN: 6515–00–NIB–0744—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 7″
NSN: 6515–00–NIB–0745—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 7.5″
NSN: 6515–00–NIB–0746—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 8″
NSN: 6515–00–NIB–0747—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 8.5″
NSN: 6515–00–NIB–0748—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 9″
NSN: 6515–00–NIB–0749—Gloves, Surgical, Powder-free, Triumph LT, White, Size 5.5″
NSN: 6515–00–NIB–0750—Gloves, Surgical, Powder-free, Triumph LT, White, Size 6″
NSN: 6515–00–NIB–0751—Gloves, Surgical, Powder-free, Triumph LT, White, Size 6.5″
NSN: 6515–00–NIB–0752—Gloves, Surgical, Powder-free, Triumph LT, White, Size 7″
NSN: 6515–00–NIB–0753—Gloves, Surgical, Powder-free, Triumph LT, White, Size 7.5″
NSN: 6515–00–NIB–0754—Gloves, Surgical, Powder-free, Triumph LT, White, Size 8″
NSN: 6515–00–NIB–0755—Gloves, Surgical, Powder-free, Triumph LT, White, Size 8.5″
NSN: 6515–00–NIB–0756—Gloves, Surgical, Powder-free, Triumph LT, White, Size 9″
NSN: 6515–00–NIB–0757—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 5.5″
NSN: 6515–00–NIB–0758—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 6″
NSN: 6515–00–NIB–0759—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 6.5″
NSN: 6515–00–NIB–0760—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 7″
NSN: 6515–00–NIB–0761—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 7.5″
NSN: 6515–00–NIB–0762—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 8″
NSN: 6515–00–NIB–0763—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 8.5″
NSN: 6515–00–NIB–0764—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 9″
NSN: 6515–00–NIB–0765—Gloves, Surgical, Powder-free, OR Classic, White, Size 5.5″
NSN: 6515–00–NIB–0766—Gloves, Surgical, Powder-free, OR Classic, White, Size 6″
NSN: 6515–00–NIB–0767—Gloves, Surgical, Powder-free, OR Classic, White, Size 6.5″
NSN: 6515–00–NIB–0768—Gloves, Surgical, Powder-free, OR Classic, White, Size 7″
NSN: 6515–00–NIB–0769—Gloves, Surgical, Powder-free, OR Classic, White, Size 7.5″
NSN: 6515–00–NIB–0770—Gloves, Surgical, Powder-free, OR Classic, White, Size 8″
NSN: 6515–00–NIB–0771—Gloves, Surgical, Powder-free, OR Classic, White, Size 8.5″
NSN: 6515–00–NIB–0772—Gloves, Surgical, Powder-free, OR Classic, White, Size 9″
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN
Contracting Activity: Department of Veterans Affairs, National Acquisition Center, Hines, IL
Coverage: C–List for 100% of the requirement of the Department of Veterans Affairs as aggregated by the Department of Veterans Affairs National Acquisition Center, Hines, IL.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, FBI Information Technology Center, 1203 Nealis Avenue, Fort Monmouth, NJ
NPA: The Center for Vocational Rehabilitation, Inc., Eatontown, NJ
Contracting Activity: Dept of Just/Federal Bureau of Investigation, Washington, DC

Service Type/Location: Laundry Service, Stratton Medical Center, 113 Holland Ave, Albany, NY
NPA: Uncle Sam's House, Inc., Schenectady, NY
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL

Service Type/Location: Janitorial/Custodial, Social Security Administration District, 686 Nye Avenue—Office Building, Irvington, NJ
NPA: The First Occupational Center of New Jersey, Orange, NJ
Contracting Activity: GSA/Public Buildings Service, Newark, NJ

Service Type/Location: Janitorial/Custodial, USCG, Sandy Hook Detachment, 20 Crispin Road, Highlands, NJ
NPA: The Center for Vocational Rehabilitation, Inc., Eatontown, NJ
Contracting Activity: U.S. Coast Guard, Department of Homeland Security

Service Type/Location: Janitorial/Custodial, Buildings 1830, 1807, 2155, 4050 and 427, Fort Polk, LA
NPA: Vernon Sheltered Workshop, Inc., Leesville, LA
Contracting Activity: Dept. of the Army, W6QM Ft. Polk DOC, Fort Polk, LA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–26019 Filed 10–6–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, October 12, 2011, 9 a.m.–12 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Decisional Matters

(1) Testing & Certification/Components Parts Final Rules;
(2) Representative—Notice of Proposed Rulemaking; and
(3) **Federal Register** Notice on HR2715 Questions.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.* For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 4, 2011.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2011–26094 Filed 10–5–11; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, October 12, 2011; 2 p.m.–3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 4, 2011.

Todd A Stevenson,

Secretariat.

[FR Doc. 2011–26096 Filed 10–5–11; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Acquisition University Board of Visitors; Cancellation

AGENCY: Defense Acquisition University (DAU), Department of Defense (DoD).

ACTION: Notice; cancellation.

SUMMARY: On September 22, 2011 (76 FR 58786), the Defense Acquisition University Board of Visitors announced a meeting to be held Thursday, October 13, 2011, from 8:30 a.m. to 11:45 a.m. at the Hirsch Center, Building 226, Defense Acquisition University, 9820 Belvoir Road in Fort Belvoir, Virginia.

Pursuant to 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 that this meeting is cancelled due to scheduling conflicts.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, Protocol Director, DAU. *Phone:* 703–805–5134. *Fax:* 703–805–5940. *E-mail: christen.goulding@dau.mil.*

Dated: October 3, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26025 Filed 10–6–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0109]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice to Delete a System of Records.

SUMMARY: The Office of the Secretary of Defense is deleting a systems of record notice from its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 7, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 4, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

DMDC 14

Health Record Tracking System (HRTS) (December 27, 2010, 75 FR 81246).

REASON:

Based on a review of system of records notice, DMDC 14, it was determined that this system is no longer being used. Following the National Archives and Records Administration retention and disposal schedule, all records have been destroyed.

[FR Doc. 2011–25984 Filed 10–6–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: Office for Civil Rights, U.S. Department of Education.

ACTION: Notice of An Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Equity and Excellence Commission (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: October 26, 2011.

TIME: 9:00 a.m. to 5:30 p.m. Eastern Standard Time.

ADDRESSES: The Commission will meet in Washington, DC at United States Department of Education at 400 Maryland Avenue, SW., Washington, DC 20202, in Room 1W105/108.

FOR FURTHER INFORMATION CONTACT: Jim Eichner, Designated Federal Official, Equity and Excellence Commission,

U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. E-mail: *equitycommission@ed.gov.* Telephone: (202) 453–5945.

SUPPLEMENTARY INFORMATION: On October 26th, 2011 from 9:00 a.m. to 5:30 p.m. Eastern Standard Time, the Equity and Excellence Commission will hold an open meeting in Washington, DC in room 1W105/108 at the U.S. Department of Education's main building at 400 Maryland Avenue, SW., Washington, DC 20202.

The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's October 26 meeting will include discussion of particular language for certain portions of the report and reaching consensus on particular recommendations. Due to time constraints, there will not be a public comment period, but, individuals wishing to provide comments may contact the Equity Commission via e-mail at *equitycommission@ed.gov.* For comments related to the upcoming meeting, please submit comments no later than October 19, 2011.

Individuals interested in attending the meeting must register in advance because seating may be limited. Please contact Jim Eichner at (202) 453–5945 or by e-mail at *equitycommission@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Jim Eichner at (202) 245–5945 no later than October 19, 2011. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 from the hours of 9 a.m. to 5 p.m. Eastern Standard Time.

Sandra Battle,

Deputy Assistant Secretary for Enforcement, Office for Civil Rights.

[FR Doc. 2011–25983 Filed 10–6–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on DOE's request the Office of Management and Budget (OMB) to extend for three years the emergency Information Collection Request Title: OE Recovery Act Financial Assistance Grants, OMB Control No. 1910–5149 that DOE is submitting to OMB pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before November 7, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to:

Matthew Grosso, Program Analyst, U.S. Department of Energy, OE/Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 or by fax at 202–586–5860, or by e-mail at *matthew.grosso@hq.doe.gov;* and

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Matthew Grosso at *matthew.grosso@hq.doe.gov,* or *http://energy.gov/oe/technology-development/smart-grid/recovery-act-smart-grid-investment-grants/smart-grid-investment.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5149; (2) *Information Collection Request Title:* OE Recovery Act Financial Assistance Grants; (3) *Type of Request:* Three-year extension of a prior request; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act funds); (5) *Annual Estimated Number of Respondents:* 138; (6) *Annual Estimated Number of Total Responses:* 1,656; (7) *Annual Estimated Number of Burden Hours:* 26,496; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $483,000 for the first year, $138,000 each subsequent year.

Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), Pub. L. 110–140.

Issued in Washington, DC on October 3, 2011.

Terri T. Lee,

Chief Operating Officer, Electricity Delivery and Energy Reliability.

[FR Doc. 2011–26061 Filed 10–6–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–547–000]

Natural Gas Pipeline Company of America LLC; Notice of Application

Take notice that on September 20, 2011, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515–7918, filed in Docket Number CP11–547–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), an application to abandon and construct certain facilities located in Washington County, Iowa; Effingham, Clinton, and Piatt Counties, Illinois; and Harrison County, Texas. Natural's proposal is referred to as the 2012 NGPL Storage Optimization Project. The project has a total cost $57,585,839 plus $6,292,904 for the proposed

abandonment, and Natural proposes rolled-in treatment for the costs of the project. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

The 2012 NGPL Storage Optimization Project includes the following:

(1) In Washington County, Iowa, at its Compressor Station No. 205 (CS 205), Natural proposes to construct a new 3,550 horsepower (hp) gas fired compressor unit, abandon dual 6-inch meter runs, and install new dual 10-inch meter runs. At its Keota St. Peter Reservoir, Natural proposes to increase the peak day withdrawal at full inventory by 35 MMcf/d for a total peak day withdrawal rate of 100 MMcf/d.

(2) In Effingham County, Illinois, Natural proposes to construct a new ''greenfield'' compressor station (CS 206A) consisting of a 22,000 hp electric motor driven centrifugal compressor unit, and associated facilities.

(3) In Clinton County, Illinois, Natural proposes to abandon in place two 2,800 hp gas fired compressor units at CS 310.

(4) In Piatt County, Illinois, Natural proposes to abandon in place three 2,800 hp gas fired compressor units at CS 311; and

(5) In Harrison County, Texas, Natural proposes to reduce the cushion gas inventory by 5 Bcf at its North Lansing Storage Field and retain the 5 Bcf of cushion gas capacity for operational needs, without changing the certificated total capacity, certificated working gas capacity, or certificated cushion gas capacity of the field.

Any questions regarding this Application should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, LLC, 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515–7918, phone (630) 725–3070 or *bruce_newsome@kindermorgan.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 21, 2011.

Dated: September 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25961 Filed 10–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–66–000]

Martha Coakley, Attorney General of the Commonwealth of Massachusetts, Connecticut Public Utilities Regulatory Authority, et al. v. Bangor Hydro-Electric Company, Central Maine Power Company, et al.; Notice of Complaint

Martha Coakley, Attorney General of the Commonwealth of Massachusetts, Connecticut Public Utilities Regulatory Authority, Massachusetts Department of Public Utilities, New Hampshire Public Utilities Commission, George Jepsen, Attorney General of the State of Connecticut, Connecticut Office of Consumer Counsel, Maine Office of the Public Advocate, New Hampshire Office of the Consumer Advocate, Rhode Island Division of Public Utilities and Carriers, Vermont Department of Public Service, Massachusetts Municipal Wholesale Electric Company, Associated Industries of Massachusetts, The Energy Consortium, Power Options, Inc., Industrial Energy Consumer Group v. *Bangor Hydro-Electric Company, Central Maine Power Company, New England Power Company, New Hampshire Transmission LLC, Northeast Utilities Service Company, on behalf of its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, NSTAR Electric & Gas Corporation, The United Illuminating Company, Unitil Energy*

Systems, Inc., Fitchburg Gas and Electric Light Company, Vermont Transco, LLC, ISO New England Inc.

Notice of Complaint

Take notice that on September 30, 2011, Pursuant to sections 206 and 306 of the Federal Power Act (''FPA''), 16 U.S.C. 824e and 825e and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2011), Martha Coakley, Attorney General of the Commonwealth of Massachusetts (Massachusetts Attorney General), Connecticut Public Utilities Regulatory Authority (CT PURA), Massachusetts Department of Public Utilities (Mass DPU), New Hampshire Public Utilities Commission (NH PUC), George Jepsen, Attorney General of the State of Connecticut (Connecticut Attorney General), Connecticut Office of Consumer Counsel, Maine Office of the Public Advocate, New Hampshire Office of the Consumer Advocate, (NH OCA), Rhode Island Division of Public Utilities and Carriers, Vermont Department of Public Service (VDPS), Massachusetts Municipal Wholesale Electric Company (MMWEC), Associated Industries of Massachusetts, The Energy Consortium, Power Options, Inc., and the Industrial Energy Consumer Group (IECG) (collectively Complainants) filed a formal complaint against Bangor Hydro-Electric Company (BHE); Central Maine Power Company (CMP), New England Power Company, New Hampshire Transmission LLC d/b/a NextEra (NHT); NSTAR Electric and Gas Corporation (NSTAR), Northeast Utilities Service Company (NUSCO), on behalf of its operating company affiliates: The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), and Public Service Company of New Hampshire (PSNH), The United Illuminating Company (UI), Unitil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company (Unitil), Vermont Transco, LLC (Vermont Transco) (collectively, New England Transmission Owners or TOs) and ISO New England Inc. (ISO–NE or ISO) (collectively Respondents) seeking an order to reduce the 11.14 percent base return on equity (Base ROE) used in calculating formula rates for transmission service under the ISO–NE Open Access Transmission Tariff (OATT) to a just and reasonable level at 9.2 percent.

Complainants certify that copies of the Complaint were served on the contacts for the TOs and ISO–NE as listed on the Commission's list of Corporate Officials and on parties and the regulatory agencies the State Complainants reasonably expect to be affected by this Complaint.

Any person desiring to intervene or to protest this filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 20, 2011.

Dated: September 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25963 Filed 10–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–46–000]

Kern River Gas Transmission Company; Notice of Availability of the Environmental Assessment for the Proposed Mountain Pass Lateral Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Mountain Pass Lateral Project proposed by Kern River Gas Transmission Company (Kern River) in the above-referenced docket. Kern River requests authorization to construct and operate a natural gas pipeline to provide service to a Molycorp Minerals, LLC facility in California.

The proposed Mountain Pass Lateral Project includes approximately 8.6 miles of 8-inch-diameter lateral pipeline, a pig [1] launcher and receiver, and a tap and meter station. The project would be located in eastern San Bernardino County, California.

The EA assesses the potential environmental effects of the construction and operation of the Mountain Pass Lateral Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The U.S. Department of the Interior's Bureau of Land Management (BLM) and Fish and Wildlife Service (FWS) participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The BLM will adopt and use the EA to consider the issuance of a right-of-way grant for the portion of the project on Federal lands. The FWS will use the Biological Assessment, included with the EA as Appendix D, for formal consultation with FERC under Section 7 of the Endangered Species Act.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at:

Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interested individuals and groups;

[1] A ''pig'' is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before October 31, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP11–46–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). [2] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP11–46). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Dated: September 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25962 Filed 10–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2567–041]

Northern States Power Company; Notice of Application To Amend License and Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to License.

b. *Project No:* 2567–041.

c. *Date Filed:* August 23, 2011.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* Wissota Hydroelectric Project.

f. *Location:* The project is located on the Chippewa River, near the towns of Lafayette and Anson, in Chippewa County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* William P. Zawacki, Director of Hydro Plants, Xcel Energy, 1414 W. Hamilton Ave., P.O. Box 8, Eau Claire, WI 54702–0008; and Matthew J. Miller, Hydro Licensing Specialist, Xcel Energy, 1414 W. Hamilton Ave., P.O. Box 8, Eau Claire, WI 54702–0008.

i. *FERC Contact:* Christopher Chaney; (202) 502–6778; *christopher.chaney@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2567–041) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee is seeking to amend the license for the Wissota Hydroelectric Project to authorize the proposed rehabilitation of two of the project's six units. The project's total authorized installed capacity would increase by 1,400 kW [from 36,000 kW to 39,000 kW] and the maximum hydraulic capacity would increase by 720 cubic feet per second (cfs) [from 9,600 cfs to 10,320 cfs].

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at

[2] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

http://www.ferc.gov/docs-filing/elibrary.asp. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25964 Filed 10–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14201–000]

Bison Peak Pumped Storage, LLC.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 5, 2011, the Bison Peak Pumped Storage, LLC., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Bison Peak Pumped Storage Project (Bison Peak Project or project) to be located in the Tehachapi Mountains south of Tehachapi, Kern County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The applicant has proposed four alternatives for the placement of a lower reservoir, termed ''South,'' ''Tejon,'' ''Horsethief,'' and ''Sawmill.'' Water for the initial fill of each of the alternatives would be obtained from local water agency infrastructure via a route that would be identified during studies.

The South alternative proposal would consist of the following: (1) An upper dam with a height of 50 feet, a crest length of 7,128 feet, and with a reservoir having a total storage capacity of 5,500 acre-feet at a normal maximum operating elevation of 7,860 feet mean sea level (msl); (2) a lower dam with a height of 310 feet, a crest length of 1,160 feet, and with a reservoir having a total storage capacity of 5,805 acre-feet at a normal maximum operating elevation of 5,100 feet msl; (3) a 9,060-foot-long underground conduit; (4) a powerhouse containing four 250-megawatt (MW) reversible pump turbines and located 900 feet below ground level, approximately midway between the upper and lower reservoirs; (5) a powerhouse access tunnel of approximately 2,090 feet; and (6) a 3.2- or 5.3-mile-long, 345-kilovolt (kV) transmission line to either the existing Cottonwind or Windhub substations, respectively.

The Tejon alternative proposal would consist of the following: (1) An upper dam with a height of 50 feet, a crest length of 7,128 feet, and with a reservoir having a total storage capacity of 5,500 acre-feet at a normal maximum operating elevation of 7,860 feet msl; (2) a lower dam with a height of 260 feet, a crest length of 1,480 feet, and with a reservoir having a total storage capacity of 6,355 acre-feet at a normal maximum operating elevation of 5,250 feet msl; (3) a 10,350-foot-long underground conduit; (4) a powerhouse containing four 250–MW reversible pump turbines and located 900 feet below ground level, approximately midway between the upper and lower reservoirs; and (5) a 14.2- or 14.8-mile-long transmission line (including both new construction of a 345-kV line and upgrades to existing transmission lines) to either the existing Cottonwind or Windhub substations, respectively. The estimated annual generation of the Bison Peak Pumped Storage Project would be 3,066 gigawatt-hours.

The Horsethief alternative would consist of the following: (1) An upper dam with a height of 50 feet, a crest length of 7,128 feet, and with a reservoir having a total storage capacity of 5,500 acre-feet at a normal maximum operating elevation of 7,860 feet msl; (2) a lower dam with a height of 310 feet, a crest length of 1,000 feet, and with a reservoir having a total storage capacity of 4,460 acre-feet at a normal maximum operating elevation of 5,650 feet msl; (3) a 11,000-foot-long underground conduit; (4) a powerhouse containing four 125–MW reversible pump turbines and located 1,500 feet below ground level, approximately midway between the upper and lower reservoirs; and (5) a 15.7- or 11.5-mile-long transmission line (including both new construction of a 230-kV line and upgrades to existing transmission lines) to either the existing Whirlwind or Windhub substations, respectively. The estimated annual generation of the Bison Peak Pumped Storage Project would be 1,533 gigawatt-hours.

The Sawmill alternative would consist of the following: (1) An upper dam with a height of 50 feet, a crest length of 7,128 feet, and with a reservoir

having a total storage capacity of 5,500 acre-feet at a normal maximum operating elevation of 7,860 feet msl; (2) a lower dam with a height of 310 feet, a crest length of 1,160 feet, and with a reservoir having a total storage capacity of 6,205 acre-feet at a normal maximum operating elevation of 6,000 feet msl; (3) a 9,750-foot-long underground conduit; (4) a powerhouse containing four 125–MW reversible pump turbines and located 450 feet below ground level, approximately midway between the upper and lower reservoirs; and (5) a 16.8- or 10.9-mile-long transmission line (including both new construction of a 230-kV line and upgrades to existing transmission lines) to either the existing Whirlwind or Windhub substations, respectively. The estimated annual generation of the Bison Peak Pumped Storage Project would be 1,533 gigawatt-hours.

Applicant Contact: Bison Peak Pumped Storage, LLC. 9795 Cabrini Dr., Ste. 206, Burbank, CA 91504; phone: (818) 767–5554.

FERC Contact: Matt Buhyoff; phone: (202) 502–6824.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14201–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25965 Filed 10–6–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2008–0701; FRL–9475–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by EPA for Economics Projects (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on March 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 6, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2008–0701, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Office of Environmental Information, Environmental Protection Agency, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2008–0701. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. 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 e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nathalie Simon, Office of Policy, (MC 1809T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2347; fax number: 202–566–2363; e-mail address: *simon.nathalie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2008–0701 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI 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. Once in the system, select ''search,'' then key in

the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are members of the general public, although the target population for the focus group discussions will vary by project.

Title: Focus Groups as used by EPA for Economics Projects (Renewal).

ICR numbers: EPA ICR No. 2205.07, OMB Control No. 2090–0028.

ICR status: This ICR is currently scheduled to expire on March 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Environmental Protection Agency (EPA) is seeking renewal of a generic information collection request (ICR) for the conduct of focus groups and protocol interviews (hereafter jointly referred to as focus groups) related to economics projects. Over the next three years, the Agency anticipates embarking on a number of survey development efforts associated with a variety of economics projects including those related to valuation of ecosystems, children's health risks, mortality risk reductions, improvements to coastal waters including the Chesapeake Bay, to name a few. Focus groups are an important part of any survey development process, allowing researchers to directly gauge what specific issues are important to the public and providing a means for explicitly testing draft survey materials. Through these focus groups, the Agency will be able to gain a more in-depth understanding of the public's attitudes, beliefs, motivations and feelings regarding specific issues and will provide valuable information regarding the quality of draft survey instruments.

The information collected in the focus groups will be used to develop and improve economics-related surveys. To the extent that these surveys are ultimately successfully administered, they will serve to expand the Agencies understanding of benefits and costs of a variety of actions and could provide the means to quantitatively assess the effects of others. Participation in the focus groups will be voluntary and the identity of the participants will be kept confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,011.

Frequency of response: Once.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,358.

Estimated total annual costs: $22,385. This includes estimated respondent burden costs only as there are no capital costs or operating and maintenance costs associated with this collection of information.

Are there changes in the estimates from the last approval?

Burden estimates included here are based on the supporting statement submitted for the most recent renewal of the approved ICR. Burden estimates will be revised to reflect new information and will be made available for public comment at the time the ICR is submitted to OMB for approval.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 29, 2011.

Al McGartland,

Director, National Center for Environmental Economics.

[FR Doc. 2011–26087 Filed 10–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9476–7]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Designation of One New Equivalent Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of one new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, one new equivalent method for measuring concentrations of ozone (O_3) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Robert Vanderpool, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. E-mail: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQSs. A list of all reference or equivalent methods that have been previously designated by EPA may be found at *http://www.epa.gov/ttn/amtic/criteria.html.*

The EPA hereby announces the designation of one new equivalent method for measuring pollutant concentrations of O_3 in the ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on June 22, 2010 (75 FR 35597).

The new O_3 equivalent method is an automated monitoring method (analyzer) utilizing a measurement principle based on chemiluminescence reaction of O_3 with nitric oxide (NO). (Note that this is the first O_3 equivalent method designated by EPA that utilizes this particular measurement principle, which is distinguished from the measurement principle of chemiluminescence reaction of O_3 with ethylene specified for EPA reference methods for O_3.) The newly designated equivalent method is identified as follows:

EQOA–0611–199, ''Teledyne—Advanced Pollution Instrumentation, Inc. Model 265E or T265 Chemiluminescence Ozone Analyzer,'' operated on any full scale range between 0–100 ppb and 0–1000 ppb, with any range mode (Single, Dual, or AutoRange), at any ambient temperature in the range of 5 °C to 40 °C, and with a TFE filter in the sample air inlet, operated with a sample flow rate of 500 ± 50 cm^3/min (sea level), with the dilution factor set to 1, with Temp/Press compensation ON, and in accordance with the appropriate associated instrument manual, and with or without any of the following options: Internal or external sample pump, Sample/Cal valve option, Rack mount with or without slides, analog input option, 4–20 mA isolated current loop output.

The application for an equivalent method determination for this candidate method was received by the EPA on November 7, 2010. The analyzer models are commercially available from the applicant, Teledyne Advanced Pollution Instrumentation, Inc., 9480 Carroll Park Drive, San Diego, CA 92121–2251.

A representative test analyzer has been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on June 22, 2010). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program,'' EPA–454/B–08–003, December, 2008 (both available at *http://www.epa.gov/ttn/amtic/qalist.html*). Vendor modifications of a designated equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler, analyzer, or method that is identical to the sampler, analyzer, or method described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.,* by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical

aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 2011–26092 Filed 10–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9476–9]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Airway Heights (the City), Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a waiver from the Buy American requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City for the purchase of six Carrier split ductless air conditioning (AC) units, manufactured in Mexico and South Korea. This is a project specific waiver and only applies to the use of the specified products for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The waiver applicant states that AC systems are required to provide a constant temperature for the electrical control room as part of the City's project to upgrade of the wastewater treatment plant. The City's consulting engineer requested the Carrier AC system products based on specifications on the project plans for six Carrier split ductless AC units. The City has provided sufficient documentation to support their request. This action allows the installation of the six specified ductless AC units as noted in the City's June 22, 2011, request and additional follow up documentation.

DATES: *Effective Date:* September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Michelle Tucker, CWSRF Coordinator, Grants and Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553–1414, U.S. EPA Region 10 (OWW–137), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City for purchase of six non-domestic manufactured Carrier split ductless (AC) units. The City requires the AC systems to provide a constant temperature for the electrical control room as part of the City's project to upgrade of the wastewater treatment plant. The City planned to purchase and install the identified six ductless split AC units and one ducted unit from Carrier. The units are needed to keep the motor starters, control equipment, power transformers, circuit breakers, and other electronic controlling equipment at the wastewater treatment plant from overheating. The City's consultant conducted due diligence and research with five product suppliers of AC systems in the Eastern Washington area. The City's consultant concluded that there are no domestically produced ductless AC systems that could meet the product specifications.

EPA has also evaluated the City's request to determine if its submission is considered late or if it could be considered timely, as per OMB regulations at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contact as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB regulation, which says ''the award official *may* deny the request.'' For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the City's requirement for ductless split AC units. The waiver request was submitted after contract signing; however, it was reasonably unforeseeable. ARRA Buy American documentation for the AC units was not supplied with the initial submittal in January 2010. Pending re-submittal of the documentation, the City discovered that the units had a plate stamped ''Made in Mexico'' in September 2010. The City checked with the Department of Ecology and EPA to determine if the units were eligible under the Section 1605(d) trade agreement exception; EPA confirmed the units were not eligible for that exception. The City spent several months coordinating back and forth with the manufacturer and the contractor to explain that they were not covered by any international trade agreements and that an alternate means of compliance was necessary. The drafting of the project-specific availability waiver began in March 2011. The City delayed submitting the waiver request to investigate a potential domestic manufacturer (Enviromaster International) lead, which ultimately did not work out. Since the City was investigating various means of Buy American compliance through gathering adequate documentation, coordinating with the manufacturer and contractor, and researching potential domestic manufacturers, the circumstance of applying for a waiver after the start of construction was not foreseen. EPA has evaluated this information and will consider the City's waiver request as a timely request since it was reasonably unforeseeable.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'', defines ''satisfactory quality'' as the quality of iron, steel or the relevant manufactured good as specified in the project plans and design. The City provided information to the EPA representing there are no current domestic manufacturers of the six ductless split air conditioning units. EPA's contractor reviewed the information provided by the City and determined that City's claim that no domestically manufactured air conditioner units exist that meets the project specifications for the six split ductless AC units is supported by the available information.

Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to revise their design and potentially choose a more costly and less effective project. The implementation of ARRA Buy American requirements on such projects eligible for CWSRF assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA, to create or retain jobs.

The Grants and Strategic Planning Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to establish a proper basis. The basis for this project waiver is the authorization provided in Section 1605(b)(2), due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the City's design specifications.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual assistance recipients. Having established both a proper basis to specify the particular good required for this project, and, that this manufactured good was not available from a manufacturer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of six Carrier split ductless AC units, manufactured in Mexico and South Korea, for a wastewater treatment plant project specified in the City's waiver request of June 22, 2011. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: September 21, 2011.

Dennis J. McLerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2011–26091 Filed 10–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9477–2]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of West Monroe, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 6 is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) (manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality) to the City of West Monroe (''the City'') for the purchase of the selected carbon steel pipe fittings and appurtenances (elbows, tees and flanges) to be incorporated in the Sparta Reuse Project—Waste Water Treatment Facility. The required carbon steel pipe fittings and appurtenances are manufactured by foreign manufacturers and no United States manufacturer produces an alternative that meets the City's technical specifications. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on the specific project circumstances. The Regional Administrator is making this determination based on the review and recommendations of the EPA Region 6, Water Quality Protection Division. The City has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of the selected carbon steel pipe fittings and appurtenances not manufactured in America, for the proposed project being implemented by the City.

DATES: *Effective Date:* September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Nasim Jahan, Buy American Coordinator, (214) 665–7522, SRF & Projects Section, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and 1605(b)(2), EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements to the City for the acquisition of selected carbon steel pipe fittings and appurtenances (elbows, tees and flanges). The City has been unable to find American made carbon steel pipe fittings and appurtenances to meet its specific water requirements.

Section 1605 of ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that: (1) Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The City has provided information to the EPA demonstrating that there are no carbon steel pipe fittings and appurtenances manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. The City indicated that of the ten US companies contacted, seven could not meet the requirement to provide the fittings and flanges manufactured from carbon steel sourced from steel mills in the United States. The remaining three companies contacted did not respond to requests for information regarding the sources of metals used in the fabrication of their products.

The project specifications include requirements for the following pipe fittings and flanges:

Description	Quantity	Material	Code standard	Connection type
16-in. STD LR 90o elbow	6	Carbon Steel	ANSI A234 WPB	Butt weld.
20-in. STD LR 90o elbow	3	Carbon Steel	ANSI A234 WPB	Butt weld.
24-in. STD LR 90o elbow	16	Carbon Steel	ANSI A234 WPB	Butt weld.
20-in. STD LR 45o elbow	1	Carbon Steel	ANSI A234 WPB	Butt weld.
8-in. STD TEE	42	Carbon Steel	ANSI A234 WPB	Butt weld.
24-in. STD Raised Face Blind Flange	2	Carbon Steel	150# ANSI A105	Not applicable.

Description	Quantity	Material	Code standard	Connection type
24-in. STD Raised Face Weld Neck Flange	3	Carbon Steel	150# ANSI A105	Not applicable.
24-in. STD Flat Face Weld Neck Flange	1	Carbon Steel	150# ANSI A105	Not applicable.

Based on additional research conducted by EPA Region 6 there do not appear to be any American-made carbon steel pipe fittings and appurtenances that would meet the City's technical specifications. EPA's national contractor prepared a technical assessment report based on the waiver request submittal, which confirmed the waiver applicant's claim that there are no American-made carbon steel pipe fittings and appurtenances available for use in the proposed waste water treatment system.

EPA has also evaluated the City's request to determine if its submission is considered late or if it could be considered timely, as per the OMB regulation at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says ''the award official *may* deny the request.'' For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, the waiver request was submitted after the contract date because the City initiated an evaluation of substantial transformation for the pipe fittings and appurtenances; however, after having a thorough discussion at the Regional level, the City has made a decision that the issuance of the project specific waiver for the carbon steel pipe fittings and appurtenances is the best way to ensure that the City is in compliance with the Buy American provisions of ARRA. There is no indication that the City failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider the City's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the City and no loss by the government due to the late request.

The April 28, 2009, EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009,''defines reasonably available quantity as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The City has incorporated specific technical design requirements for installation of carbon steel pipe fittings and appurtenances at its wastewater treatment plant.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring utilities, such as the City, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The Region 6 Water Quality Protection Division has reviewed this waiver request, and has determined that the supporting documentation provided by the City is sufficient to meet the criteria listed under ARRA, Section 1605(b), Office of Management and Budget (OMB) regulations at 2 CFR 176.60—176.170, and in the April 28, 2009, memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the American Recovery and Reinvestment Act of 2009. The basis for this project waiver is the authorization provided in ARRA, Section 1605(b) (2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the City's technical specifications, a waiver from the Buy American requirement is justified.

EPA headquarters' March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular goods required for this project, and that these manufactured goods are not available from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111–5 for the purchase of the selected carbon steel pipe fittings and appurtenances, using ARRA funds, as specified in the City's request. This supplementary information constitutes the detailed written justification required by ARRA, Section 1605(c), for waivers ''based on a finding under subsection (b).''

Authority: Pub. L. 111–5, section 1605.

Dated: September 26, 2011.

Al Armendariz,

Regional Administrator, U.S. Environmental Protection Agency, Region 6.

[FR Doc. 2011–26090 Filed 10–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–4]

Environmental Impacts Statements; Notice of Availability

AGENCY: Office of Federal Activities, EPA.

General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/26/2011 Through 09/30/2011

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110332, Draft Supplement, USFS, MT, Montanore Project, Additional Information on Alternatives, Proposes to Construct a

Copper and Silver Underground Mine and Associated Facilities, Including a New Transmission Line, Plan-of-Operation Permit, Kootenai National Forest, Sanders County, MT, *Comment Period Ends:* 11/21/2011, *Contact:* Lynn Hagarty 406–283–7642.

EIS No. 20110333, Final EIS, GSA, 00, International Falls Land Port of Entry Improvements Study, Proposes To Replace the Existing Land Port of Entry, Minnesota along the U.S. and Canada Border, *Review Period Ends:* 11/07/2011, *Contact:* Donald R. Melcher 312–353–1237.

EIS No. 20110334, Draft EIS, NPS, 00, Blue Ridge Parkway General Management Plan, Implementation, Virginia and North Carolina, *Comment Period Ends:* 12/06/2011, *Contact:* Chris Church 303–969–2276.

EIS No. 20110335, Final EIS, USACE, 00, Fargo-Moorhead Metropolitan Area Flood Risk Management, To Document the Analysis of Alternatives Developed To Reduce Flood Risk, Red River of the North Basin, ND and MN, *Review Period Ends:* 11/07/2011, *Contact:* Aaron Snyder 651–290–5489.

EIS No. 20110336, Draft Supplement, USFS, 00, Rogue River-Siskiyou National Forest, Motorized Vehicle Use, Supplement the Existing 2009 FEIS To Add Complete Information and Analysis, Implementation, Douglas, Klamath, Jackson, Curry, Coos and Josephine Counties, OR and Del Norte and Siskiyou Counties, CA, *Comment Period Ends:* 11/21/2011, *Contact:* David Krantz 541–618–2200.

EIS No. 20110337, Final EIS, BIA, CA, Manzanita Casino—Manzanita Band of Kumeyaay Indians Fee-To-Trust and Casino Facility/Hotel Project, Construction and Operation, City of Calexico, Imperial County, CA, *Review Period Ends:* 11/07/2011, *Contact:* John Rydzik 916–978–6051.

EIS No. 20110338, Final EIS, NPS, WV, New River Gorge National River Project, General Management Plan, Implementation, Fayette, Raleigh and Summers Counties, WV, *Review Period Ends:* 11/07/2011, *Contact:* Deborah Darden 304–465–6509.

EIS No. 20110339, Draft Supplement, USN, WA, Trident Support Facilities Explosives Handling Wharf (EHW–2), New Information, Construction and Operating, Naval Base Kitsap Bangor, Silverdale, WA, *Comment Period Ends:* 11/21/2011, *Contact:* Christine Stevenson 360–396–0080.

EIS No. 20110340, Draft EIS, BLM, CA, Walker Ridge Wind Energy Generation Facility, Construction, Operation and Decommissioning of a Wind Energy Generation Facility of up to 70 megawatts, Lake and Colusa Counties, CA, *Comment Period Ends:* 11/21/2011, *Contact:* Joseph Vieira 719–852–6213.

Amended Notices

EIS No. 20110265, Draft EIS, ARS, ID, U.S. Sheep Experiment Station Grazing and Associated Activities Project 2010, To Develop Integrated Methods for Increasing Production Efficiency of Sheep, Dubois, ID, *Comment Period Ends:* 11/21/2011, *Contact:* Sue Wingate 603–569–3114.

EIS No. 20110323, Draft Supplement, USFS, MI, Huron-Manistee National Forests, Supplement the 2006 FEIS Analysis and To Correct the Deficiencies that the Meister Panel Identified, Land and Resource Management Plan, Implementation, Several Counties, MI, *Comment Period Ends:* 12/23/2011, *Contact:* Ken Arbogast 231–775–2421 Revision to FR Notice 09/23/2011: Correction to Comment Period from 12/21/2011 to 12/23/2011.

EIS No. 20110327, Draft EIS, BR, 00, Klamath Facilities Removal Project, Advance Restoration of the Salmonid Fisheries Klamath Basin, Siskiyou County, CA and Klamath County, OR, *Comment Period Ends:* 11/29/2011, *Contact:* Elizabeth Vasqueuz 916–978–5055 Revision to FR Notice 09/30/2011: Correction to Comment Period from 11/21/2011 to 11/29/2011.

EIS No. 20110328, Draft EIS, NPS, CA, Drakes Bay Oyster Company (DBOC) Special Use Permit (SUP) for the Period of 10 Years for its Shellfish Operation, which Consists of Commercial Production, Harvesting, Processing, and Sale of Shellfish at Point Reyes National Seashore, CA, *Comment Period Ends:* 11/29/2011, *Contact:* Cicely Muldoon 415–464–5101 Revision to FR Notice 9/30/2011: Correction to Comment Period from 11/21/2011 to 11/29/2011.

Dated: October 4, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–26049 Filed 10–6–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, October 11, 2011, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Disclosure of Information; Privacy Act Amendments.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum re: Update of Projected Deposit Insurance Fund Losses, Income, and Reserve Ratios for the Restoration Plan.

Memorandum and resolution re: Notice of Proposed Rulemaking on Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: October 4, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–26130 Filed 10–5–11; 4:15 pm]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: October 3, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank Name	City	State	Date closed
10398	First International Bank	Plano	TX	9/30/2011

[FR Doc. 2011–25977 Filed 10–6–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov*.

Alltransport International Logistics, Inc. (NVO), 63 65th Place, Long Beach, CA 90803. Officer: Stephen A. Taub, President/Secretary/CFO (Qualifying Individual), Application Type: New NVO License.

American Global Logistics LLC dba AGL (NVO & OFF), 3399 Peachtree Road, NE., #1130, Atlanta, GA 30326, Officers: Chad Rosenberg, President/CEO (Qualifying Individual), Michael Shea, Secretary, Application Type: QI Change.

Ask-Ark, LLC (NVO), 808 Revelstore Terrace, Leesburg, VA 20176, Officers: Alphonso D. Nettles, President (Qualifying Individual), Ify S. Diala, Vice President/CFO, Application Type: New NVO License.

Ayalex LLC dba Ayalex Group (OFF), 13456 Minnieville Road, Woodbridge, VA 22192, Officers: Alexandre Ayanou, Manager/President/CEO (Qualifying Individual), Faty Ayanou, Member, Application Type: New OFF License.

C. Hartwig Gdynia dba C. Hartwig Transport (NVO), 7, Derdowskiego Street, 81–369 Gdynia, Poland, Officers: Anna Zadroga, Customer Service Manager (Qualifying Individual), Dariusz Brodecki, Chairman, Application Type: QI Change.

Crowley Logistics, Inc. (NVO & OFF), 9487 Regency Square Blvd., Jacksonville, FL 32225, Officers: John G. Smith, OTI Compliance Officer & Product Logistics Manager (Qualifying Individual), Thomas B. Crowley, Director, Application Type: QI Change.

Falcone Global Solutions, LLC (OFF), 142 Ennisbrook Drive, SE., Smyrna, GA 30082, Officers: John B. Falcone, Chief Solutions Officer (Qualifying Individual), Suki M. Falcone, President, Application Type: New OFF License.

Foothills Logistics, Inc. dba Foothills, Logistics of Florida, Inc., 327 B W Phillips Road, Greer, SC 29650, Officers: William A. Pottow, Vice President (Qualifying Individual), Janine A. Antonio, President, Application Type: License Transfer.

Inter-Jet Ocean Transport, Inc. (NVO), 2600 Main Street Extension, 2nd Floor, Sayreville, NJ 08872, Officers: Tina J. Okragly, Vice President (Qualifying Individual), Hendrick J. Hartong, Director, Application Type: QI Change.

International Shipping Lines Incorporated (NVO), 2 Thorncliffe Park Drive, Unit #28, Toronto, ON M4H 1H2 Canada, Officers: Kamran Shaikh, President (Qualifying Individual), Walaja Ahmed, Secretary, Application Type: New NVO License.

Norton Lilly Logistics, LLC (NVO & OFF), One St. Louis Center, #3002, Mobile, AL 36602, Officers: Horace W. Thurber, IV, President (Qualifying Individual), Kevin L. Filliater, Vice President, Application Type: Add OFF Service.

Oceania Logistics Inc (NVO), 131–37 41st Avenue, Suite 2B, Flushing, NY 11355, Officers: Jian Ying Du, Vice President (Qualifying Individual), Shu Wang, President, Application Type: New NVO License.

South West Caribbean International Shipping Incorporated (NVO), 3622 Church Avenue, Brooklyn, NY 11203, Officer: Marcia Brown, President and Secretary, (Qualifying Individual), Application Type: New NVO License.

Sprint Global Inc (NVO), 104 Hickorywood Blvd., Cary, NC 27519, Officers: Jagadeeswari Chandramouleeswaran, President (Qualifying Individual), Saraswathi Lakshmanan, Secretary, Application Type: New NVO License.

Trans-Force Marine, Inc. (NVO), 5960 NW. 99th Avenue, Unit #9, Doral, FL 33178, Officer: Victor Del Castillo, President/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO.

Dated: October 3, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–25910 Filed 10–6–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
3512F	Urie Transportation Management, Incorporated dba U.S. Northwest Express dba USNW Express, 5150 Village Park Drive, SE., Suite 100, Bellevue, WA 98006.	August 22, 2011.
016728F	Marushin Group, Inc., 2720 Monterey Street, Suite 405, Torrance, CA 90503	August 4, 2011.
019746N	Carmen Cargo Express Inc., 2130 SW. 58th Way, West Park, FL 33023	August 25, 2011.
021094F	Amid Logistics, LLC, 10 Florida Park Drive, N., Suite D–1A, Palm Coast, FL 32137	May 23, 2011.
021781N	T.V.L. Global Logistics Corp., 9550 Flair Drive, Suite 501, El Monte, CA 91731	August 24, 2011.
022554F	Saheed Olalekan Bello dba Sahbell International Services, 8180 Southwest Freeway, Houston, TX 77074.	July 13, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–25912 Filed 10–6–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 3105F.
Name: CJG International, Inc.
Address: 40397 Big Oak Flat Road South, Oakhurst, CA 93644.
Date Revoked: August 28, 2011.
Reason: Failed to maintain a valid bond.

License Number: 11272N.
Name: Stalwart Shipping, Inc.
Address: 40397 Big Oak Flat Road South, Oakhurst, CA 93644.
Date Revoked: August 28, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018702N.
Name: TC & RE Enterprises, Inc. dba Joinus Worldwide Freight.
Address: 1201 South Beach Blvd., Suite 202, La Habra, CA 90631.
Date Revoked: August 1, 2011.
Reason: Voluntarily surrendered license.

License Number: 019203N.
Name: Newport Logistics, Inc.
Address: 2454 East Dempster Street, Suite 206, Des Plaines, IL 60016.
Date Revoked: August 28, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019476N.
Name: Embarque Tenares Corp.
Address: 2249 Washington Avenue, Bronx, NY 10457.
Date Revoked: August 31, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021414NF.
Name: Procargo USA, LLC.
Address: 1609 NW 82nd Avenue, Doral, FL 33126.
Date Revoked: August 28, 2011.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–25913 Filed 10–6–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

October 4, 2011.

TIME AND DATE: 10 a.m., Thursday, October 13, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Big Ridge, Inc.,* Docket Nos. LAKE 2011–116–R, *et al., Peabody Midwest Mining, LLC,* Docket Nos. LAKE 2011–118–R, *et al.,* and *Independence Coal Co.,* Docket Nos. WEVA 2011–402–R, *et al.* (Issues include whether the Secretary of Labor may require that mine operators provide certain information and records to her.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2011–26209 Filed 10–5–11; 4:15 pm]

BILLING CODE 6735–01–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 application also will 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 4, 2011.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *MutualFirst Financial, Inc.,* Muncie, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of MutualBank, Muncie, Indiana.

Board of Governors of the Federal Reserve System, October 4, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–25986 Filed 10–6–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2011–25514) published on pages 61359 and 61360 Tuesday, October 4, 2011.

Under the Federal Reserve Bank of San Francisco heading, the entry for *Carpenter Fund Manager GP, LLC; Carpenter Fund Management Company, LLC; Carpenter Community BancFund, L.P.; Carpenter Community BancFund—A, L.P.; Carpenter Community BancFund—CA, L.P.; SCJ, Inc.; and CCFW, Inc.,* all in Irvine, California, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Carpenter Fund Manager GP, LLC; Carpenter Fund Management Company, LLC; Carpenter Community BancFund, L.P.; Carpenter Community BancFund—A, L.P.; Carpenter Community BancFund—CA, L.P.; SCJ, Inc.; and CCFW, Inc.,* all in Irvine, California; to acquire an additional 6 percent, for a total of 43.6 percent, of Manhattan Bancorp, and thereby indirectly acquire additional voting shares of Bank of Manhattan, N.A., both in El Segundo, California.

Comments on this application must be received by October 28, 2011.

Board of Governors of the Federal Reserve System, October 4, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–25985 Filed 10–6–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*), and Regulation LL (12 CFR part 238) or Regulation MM (12 CFR part 239) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is described in §§ 238.53 or 238.54 of Regulation LL (12 CFR 238.53 or 238.54) or § 239.8 of Regulation MM (12 CFR 239.8). Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 10a(c)(4)(B) of HOLA (12 U.S.C. 1467a(c)(4)(B)).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 2011.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Green County Bancorp, MHC,* Catskill, New York; to establish an operating real estate investment trust subsidiary, Green Property Holdings, Ltd., Catskill, New York, pursuant to section 239.8(a) of Regulation MM.

Board of Governors of the Federal Reserve System, October 3, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–25953 Filed 10–6–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the General Electric Co. in Evendale, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On August 31, 2011, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at General Electric Co. in Evendale, Ohio, from January 1, 1961 through June 30, 1970, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on September 30, 2011, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on September 30, 2011, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–26004 Filed 10–6–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Evaluation of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) Quality Demonstration Grant Program.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 3rd, 2011 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 7, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) Quality Demonstration Grant Program

AHRQ is requesting approval from the Office of Management and Budget (OMB) for data collection to support a national evaluation of the quality demonstration grants authorized and appropriated funding under subsection (d) of Sec. 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Attachment A). Evaluating whether the CHIPRA demonstration grants improve the quality of care received by children in Medicaid and CHIP aligns with AHRQ's mission of improving the quality and effectiveness of health care in the United States.

CHIPRA included funding for five-year grants so that states can demonstrate effective, replicable strategies for improving the quality of children's health care in Medicaid and CHIP. In February 2010, the U.S. Department of Health and Human Services announced the award of 10 demonstration grants. Six of the grantee states are partnering with other states, for a total of 18 demonstration states. The demonstration states are: Colorado (partnering with New Mexico); Florida (with Illinois); Maine (with Vermont); Maryland (with Wyoming and Georgia); Massachusetts; North Carolina; Oregon (with Alaska and West Virginia); Pennsylvania; South Carolina; and Utah (with Idaho).

These demonstration states are implementing 48 distinct projects in at least one of five possible grant categories, A to E. Category A grantees are experimenting with and/or evaluating the use of new pediatric quality measures. Category B grantees are promoting health information technology (HIT) for improved care delivery and patient outcomes. Category C grantees are expanding person-centered medical homes or other provider-based levels of service delivery. Category D grantees will evaluate the impact of a model pediatric electronic health record. Category E grantees are testing other state-designed approaches to quality improvement in Medicaid and CHIP.

This research has the following goals:

(1) To identify CHIPRA state activities that measurably improve the nation's health care, especially as it pertains to children.

(2) To develop a deep, systematic understanding of how CHIPRA demonstration states carried out their grant-funded projects.

(3) To understand why the CHIPRA demonstration states pursued certain strategies.

(4) To understand whether and how the CHIPRA demonstration states' efforts affected outcomes related to knowledge and behavior change in targeted providers and/or consumers of health care.

This study is being conducted by AHRQ through its contractor, Mathematica Policy Research, and two subcontractors, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement, 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Key Staff Interviews—two rounds of semi-structured interviews with key staff directly involved in the design and oversight of grant-funded activities in each of the 18 demonstration states. Key staff includes the project director, project manager, and principal investigator and/or medical director. The purpose of these interviews is to gain insight into the implementation of demonstration projects, to understand contextual factors, and to identify lessons and implications for the broad application and sustainability of projects. Because key staff have the most knowledge of project design and implementation, they will be interviewed annually. This request for OMB approval covers the first two annual interviews with key staff.

(2) Implementation Staff Interviews—semi-structured interviews with staff involved in the day-to-day implementation of grant-funded projects in each of the 18 demonstration states. These staff members include state agency employees, provider trainers or coaches, health IT vendors, and/or project consultants. The purpose of these interviews is to gain insight into the opportunities and challenges related to key technical aspects of project implementation.

(3) Stakeholder Interviews—semi-structured interviews with external stakeholders that have a direct interest in children's care quality in Medicaid and CHIP in each of the 18 demonstration states. Stakeholders include representatives of managed care organizations, state chapters of the American Academy of Pediatrics, advocacy organizations for children and families, and social service agencies. These stakeholders will be familiar with the CHIPRA projects and may serve on advisory panels or workgroups related to one or more projects. The interviews will gather insight into the opportunities and challenges related to project implementation, stakeholder satisfaction with their project involvement, and contextual factors.

(4) Health Care Provider Interviews—semi-structured interviews with health care providers who are, or are not,

participating in demonstration grant activities (participating and comparison providers, respectively) in each of the 18 demonstration states. Providers can include clinicians from private practices, public clinics, Federally qualified health centers, care management entities, or school based health centers. The interviews with participating providers will capture information about project-related activities, providers' perceptions of the likelihood of achieving intended outcomes, and providers' involvement in other quality-improvement initiatives. The interviews with comparison providers will ask about the providers' experiences providing care to children in Medicaid and CHIP, coordinating with other providers, use of HIT, and provision of patient-centered care.

(5) Non-demonstration States Interviews—semi-structured interviews with knowledgeable Medicaid or CHIP personnel including the Medicaid/CHIP director, the Medicaid health-IT coordinator, and/or project directors for state medical home initiatives in 9 non-demonstration states. The purpose of these interviews is to enrich AHRQ's understanding of how the CHIPRA quality grants contribute to improved care quality above and beyond other quality-related initiatives happening at the same time. Examples of other quality-related initiatives include those funded by the HITECH Act, the Pediatric Quality Measures Program, and various medical home initiatives.

The information collected through the semi-structured interviews will be a key source of evidence for the national evaluation of the demonstration. Collecting high-quality, timely interview data from a wide range of knowledgeable respondents directly serves AHRQ's goal of understanding project implementation and the selection and execution of strategies, and of identifying the particular activities and resources that contributed most to any observed improvement in children's care quality. The products that will result from this project include practice profiles, replication guides, case studies, and peer-reviewed journal articles.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to participate in this evaluation. Key Staff Interviews will be conducted twice with 4 persons from each of the 18 CHIPRA demonstration States and will last for about 1½ hours. Implementation Staff Interviews will include 16 persons from each of the 18 CHIPRA demonstration States and take an hour to complete. Stakeholder Interviews will include 8 persons from each of the 18 CHIPRA demonstration States and also take an hour to complete. Health Care Provider Interviews will be conducted with 12 persons from each of the 18 CHIPRA demonstration States and will last 45 minutes. Non-demonstration States Interviews will be conducted with 5 persons from 9 non-demonstration States and will take about 1 hour to complete. The total burden for this evaluation is estimated to be 855 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in this evaluation. The total cost burden is estimated to be $32,914.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection	Number of respondents	Number of States	Number of responses per respondent	Hours per response	Total burden hours
Key Staff Interviews	4	18	2	1.5	216
Implementation Staff Interviews	16	18	1	1	288
Stakeholder Interviews	8	18	1	1	144
Health Care Provider Interviews	12	18	1	45/60	162
Non-demonstration States Interviews	5	9	1	1	45
Total	45	na	na	na	855

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection	Number of respondents	Number of States	Total burden hours	Average hourly wage *	Total cost burden
Key Staff Interviews	4	18	216	$36.35	$7,852
Implementation Staff Interviews	16	18	288	34.67	9,985
Stakeholder Interviews	8	18	144	18.68	2,690
Health Care Provider Interviews	12	18	162	62.50	10,125
Non-demonstration States Interviews	5	9	45	50.26	2,262
Total	45	na	855	na	32,914

* Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States May 2009, ''U.S. Department of Labor, Bureau of Labor Statistics.'' Key project staff are state government workers who are general managers. Other implementation personnel are state workers who are managers of social and community services. External stakeholders are civilian workers who are in community and social services occupations. Participant providers are civilian pediatric physicians. Medicaid/CHIP personnel are Federal employees in a medical and health service management role.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost for this evaluation. The total cost to the government of the entire evaluation contract is $8,258,311 (including a base period and four option periods); the annualized cost is $1,651,662 per year (Exhibit 3). These costs will be incurred from 2010 to 2012.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST

Cost component	Total cost	Annual cost
Administration	$571,422	$114,284

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST—Continued

Cost component	Total cost	Annual cost
Coordination	38,003	7,601
Stakeholder Feedback	201,637	40,327
Technical Expert Panel	359,276	71,855
Evaluation Design & Implementation	3,981,390	796,278
Technical Assistance Plan	934,440	186,888
Data Collection Instruments	138,997	27,799
OMB Clearance	35,617	17,808
Section 508 Compliance	13,883	2,777
Data and Analysis Reports	735,426	147,085
Interim Evaluation Reports	408,803	81,761
Dissemination	736,149	184,037
Final Report	103,269	103,269
Total	8,258,311	1,651,662

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 26, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–25691 Filed 10–6–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0576]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Possession, Use, and Transfer of Select Agents and Toxins (OMB) Control No. (0920–0576) Exp. 12/31/2011—Revision—Office of Public Health Preparedness and Response (OPHPR), Division of Select Agents and Toxins (DSAT), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The *Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Subtitle A of Public Law 107–188 (42 U.S.C. 262a),* requires the United States Department of Health and Human Services (HHS) to regulate the possession, use, and transfer of biological agents or toxins (*i.e.,* select agents and toxins) that could pose a severe threat to public health and safety. The *Agricultural Bioterrorism Protection Act of 2002, Subtitle B of Public Law 107–188 (7 U.S.C. 8401),* requires the United States Department of Agriculture (USDA) to regulate the possession, use, and transfer of biological agents or toxins (*i.e.,* select agents and toxins) that could pose a severe threat to animal or plant health, or animal or plant products. In accordance with these Acts, HHS and USDA promulgated regulations requiring entities to register with the CDC or the Animal and Plant Health Inspection Service (APHIS) if they possess, use, or transfer a select agent or toxin (42 CFR part 73, 7 CFR part 331, and 9 CFR part 121).

CDC is requesting continued OMB approval to collect this information through the use of five forms: (1) Application for Registration, (2) Request to Transfer Select Agent or Toxin, (3) Report of Theft, Loss, or Release of Select Agent and Toxin, (4) Report of Identification of Select Agent or Toxin, and (5) Request for Exemption. Revision will be made to (2) Request to Transfer Select Agent or Toxin, (3) Report of Theft, Loss, or Release of Select Agent and Toxin, (4) Report of Identification of Select Agent or Toxin. There will be no revisions made to the Application for Registration and Request for Exemption The total estimated annualized burden for all data collection is 8,878 hours. Information will be collected via fax, e-mail and mail from respondents of the 320 entities registered with the Select Agent Program. Annualized burden hours were calculated by multiplying the average number of hours used to complete the: (1) Application for Registration; (2) Request to Transfer Select Agent or Toxin; (3) Report of Theft, Loss, or Release of Select Agent or Toxin; (4) Report of Identification of Select Agent or Toxin; and (5) Request for Exemption. The estimated annualized burden for the 2008 Possession, Use, and Transfer of Select Agents and Toxins submission was 9,656.5 hours. The 2011 estimated annualized burden hours are 8,878. Burden has been reduced by 778.5 hours due to the removal of similar questions on the Request to Transfer Select Agent or Toxin (Form 2), Report of Theft, Loss, or Release of Select Agent or Toxin (Form 3) and the Report of Identification of Select Agent or Toxin (Form 4). Therefore respondents are not required to answer as many questions as requested in the previous data collection tool.

The Request to Transfer Select Agent or Toxin form (42 CFR 73.16) will be used by entities requesting transfer of a select agent or toxin to their facility. CDC in conjunction with APHIS has revised the Request to Transfer Select Agent or Toxin form by requiring the recipient to submit the initial request, be notified by the sender of the expected shipment date, and verify if the shipment did not occur. Estimated average time to complete this form is 1 hour, 30 minutes. Based on data regarding the transfer requests received since the last submission, CDC estimates 1 transfer requests submitted per registered entity on an annual basis.

The Report of Theft, Loss, or Release of Select Agent and Toxin form (42 CFR 73.19(a)(b)) must be completed by entities whenever there is theft, loss, or release of a select agent or toxin. Estimated average time to complete this form is 1 hour. Based on data regarding the reports received since the last submission, CDC estimates that 1 report

per respondent will be received on an annual basis.

The Report of Identification of Select Agent or Toxin form 42 CFR 73.5(a)(b) and 73.6(a)(b)) will be used by clinical and diagnostic laboratories to notify CDC that select agents or toxins identified as the result of diagnostic or proficiency testing have been disposed of in a proper manner. In addition, the form will be used by Federal law enforcement agencies to report the seizure and final disposition of select agents and toxins. CDC in conjunction with APHIS has revised the Report of Identification of Select Agent or Toxin form to ensure duplicate reports are not submitted by requesting the entity making the final identification report the select agents or toxins identified as the result of diagnostic or verification testing. Estimated average time to complete this form is 1 hour. Based on data regarding the reports received since the last submission, CDC estimates that 9 reports per respondent will be received on an annual basis.

There is no cost to the respondents other than their time. The total estimated annualized burden hours are 8,878, which is a reduction of 778.5 hours from the previously approved ICR.

ESTIMATED ANNUALIZED BURDEN HOURS

CFR	Form name	Number of respondents	Number responses per respondent	Average burden per response
73.3(d)	Application for Registration	5	1	4.5
73.7(h)(1)	Amendment to Registration Application	320	8	1
73.16	Request to Transfer Select Agents or Toxins	320	1	1.5
73.19(a)(b)	Notification of Theft, Loss or Release	180	1	1
73.5 & 73.6(a)(b)	Report of Identification of Select Agent	320	9	1
73.5 & 73.6(d–e)	Request of Exemption	3	1	1
73.3 & 73.4(e)(1)	Request for Exclusions/Restricted	71	1	1
73.10(e)	Request for Expedited Review	1	1	1
73.20	Administrative Review	30	1	4
73.18	Inspections	320	1	8

Dated: September 30, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–26008 Filed 10–6–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10268 and CMS–1696]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) Third-party Submission Authorization Form; *Use:* The Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) Third-Party Submission Authorization form is to be completed by ''Facility Administrators'' (administrators of CMS-certified dialysis facilities) if they intend to authorize a third party (a business with which the facility is associated, or an independent vendor) to submit data to CMS to comply with the recently-revised Conditions for Coverage of dialysis facilities. The CROWNWeb system is the system used as the collection point of data necessary for entitlement of ESRD patients to Medicare benefits and for Federal Government monitoring and assessing of the quality and types of care provided to renal patients. The information collected through the CWTPSA form will allow CMS and its contractors to receive data from authorized parties acting on behalf of CMS-certified dialysis facilities. Since February 2009, CMS has received 4,160 CWTPSA forms and anticipates that they will continue to receive no more than 400 new CWTPSA forms annually to address the creation of new facilities under the current participating ''third party submitters.'' *Form Number:* CMS–10268 (OCN: 0938–1052); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours:* 34. (For policy questions regarding this collection contact Michelle Tucker at 410–786–0736. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Appointment of Representative; *Use:* This information collection requests re-approval of an information collection associated with regulations that permit individuals or entities to appoint representatives to exercise their rights to appeal an initial determination. The Appointment of Representative form will be completed by beneficiaries, providers and suppliers who wish to appoint representatives to assist them with obtaining initial determinations and filing appeals. The appointment of representative form must be signed by the party making the appointment and the individual agreeing to accept the appointment. *Form Number:* CMS–1696 (OCN: 0938–0950); *Frequency:* Occasionally; *Affected Public:* Individuals or households and Business or other for-profits; *Number of Respondents:* 265,481; *Total Annual Responses:* 265,481; *Total Annual*

Hours: 66,370. (For policy questions regarding this collection contact Katherine Hosna at 410–786–4993. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments must be received by *December 6, 2011,* and submitted in one of the following ways:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 4, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–26034 Filed 10–6–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10340, CMS–10237, CMS–10137, and CMS–265–11 and CMS–265–94]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Collection of Encounter Data from Medicare Advantage Organizations; *Use:* The Centers for Medicare and Medicaid Services (CMS) intends to collect encounter data, or data on each item or service delivered to an enrollee, from Medicare Advantage Organizations. Medicare Advantage organizations will obtain this data from providers. CMS would collect the data electronically from Medicare Advantage Organizations via the Health Insurance Portability and Accountability Act (HIPAA) compliant standard Health Care Claims transactions for professional data and institutional data. The information is used to submit health care claims or equivalent health encounter information, carry out health plan enrollments and disenrollments, determine health plan eligibility, send and receive health care payment and remittance advices, transmit health plan premium payments, determine health care claim status, provide referral certifications and authorizations, and coordinate the benefits for individuals who have more than one health plan. *Form Number:* CMS–10340 (OMB#: 0938–New); *Frequency:* Weekly; *Affected Public:* Private Sector; Businesses or other for-profits; *Number of Respondents:* 827; Total *Annual Responses:* 517,793,438; *Total Annual Hours:* 34,520. (For policy questions regarding this collection contact Sean Creighton at 410–786–9302 or Deondra Moseley at 410–786–4577. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Part C Medicare Advantage and 1876 Cost Plan Expansion Application; *Use:* Collection of this information is mandated in Part C of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) in Subpart K of 42 CFR part 422 entitled *Contracts with Medicare Advantage Organizations.* In addition, the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) amended titles XVII and XIX of the Social Security Act to improve the Medicare program.

In general, coverage for the prescription drug benefit is provided through prescription drug plans (PDPs) that offer drug-only coverage or through Medicare Advantage (MA) organizations that offer integrated prescription drug and health care products (MA–PD plans). PDPs must offer a basic drug benefit. Medicare Advantage Coordinated Care Plans (MA–CCPs) either must offer a basic benefit or may offer broader coverage for no additional cost. Medicare Advantage Private Fee for Service Plans (MA–PFFS) may choose to offer enrollees a Part D benefit. Employer Group Plans may also provide Part D benefits. If any of the contracting organizations meet basic requirements, they may also offer supplemental benefits through enhanced alternative coverage for an additional premium.

Organizations wishing to provide healthcare services under MA and/or MA–PD plans must complete an application, file a bid, and receive final approval from CMS. Existing MA plans may request to expand their contracted service area by completing the Service Area Expansion (SAE) application. Applicants may offer a local MA plan in a county, a portion of a county (*i.e.,* a partial county) or multiple counties. Applicants may offer a MA regional plan in one or more of the 26 MA regions.

This clearance request is for the information collected to ensure applicant compliance with CMS requirements and to gather data used to support determination of contract awards. The information will be collected under the solicitation of Part C application from MA, EGWP Plan, and Cost Plan applicants. The collection information will be used by CMS to: (1) Ensure that applicants meet CMS requirements, (2) support the determination of contract awards. Participation in all Programs is voluntary in nature. Only organizations that are interested in participating in the program will respond to the solicitation. MA–PDs that voluntarily participate in the Part C program must submit a Part D application and successful bid. *Form Number:* CMS–10237 (OMB # 0938–0935); *Frequency:* Yearly; *Affected Public:* Private Sector; *Number of Respondents:* 378; *Total Annual Responses:* 378; *Total Annual Hours:*

13,296. (For policy questions regarding this collection contact Letticia Ramsey at 410–786–5262. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Application for Prescription Drug Plans (PDP); Application for Medicare Advantage Prescription Drug (MA–PD); Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application for Prescription Drug Coverage; *Use:* The Medicare Prescription Drug Benefit program was established by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and is codified in section 1860D of the Social Security Act (the Act). Section 101 of the MMA amended Title XVIII of the Social Security Act by redesignating Part D as Part E and inserting a new Part D, which establishes the voluntary Prescription Drug Benefit Program (''Part D''). The MMA was amended on July 15, 2008 by the enactment of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), on March 23, 2010 by the enactment of the Patient Protection and Affordable Care Act and on March 30, 2010 by the enactment the Health Care and Education Reconciliation Act of 2010 (collectively the Affordable Care Act).

Coverage for the prescription drug benefit is provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates, and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application.

Effective January 1, 2006, the Part D program established an optional prescription drug benefit for individuals who are entitled to Medicare Part A or enrolled in Part B. In general, coverage for the prescription drug benefit is provided through PDPs that offer drug-only coverage, or through MA organizations that offer integrated prescription drug and health care coverage (MA–PD plans). PDPs must offer a basic drug benefit. Medicare Advantage Coordinated Care Plans (MA–CCPs) must offer either a basic benefit or may offer broader coverage for no additional cost. Medicare Advantage Private Fee for Service Plans (MA–PFFS) may choose to offer a Part D benefit. Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Plans may also provide a Part D benefit. If any of the contracting organizations meet basic requirements, they may also offer supplemental benefits through enhanced alternative coverage for an additional premium.

Applicants may offer either a PDP or MA–PD plan with a service area covering the nation (*i.e.,* offering a plan in every region) or covering a limited number of regions. MA–PD and Cost Plan applicants may offer local plans. There are 34 PDP regions and 26 MA regions in which PDPs or regional MA–PDs may be offered respectively. The MMA requires that each region have at least two Medicare prescription drug plans from which to choose, and at least one of those must be a PDP. Requirements for contracting with Part D Sponsors are defined in part 423 of 42 CFR.

This clearance request is for the information collected to ensure applicant compliance with CMS requirements and to gather data used to support determination of contract awards.; *Form Number:* CMS–10137 (OMB # 0938–0936); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 178; *Total Annual Responses:* 178; *Total Annual Hours:* 2,322. (For policy questions regarding this collection contact Linda Anders at 410–786–0459. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Independent Renal Dialysis Facility Cost Report; *Use:* Form CMS–265–94 has not been revised and will be used for cost reporting periods ending on or before December 31, 2010. Form CMS–265–11 is a new form that incorporates portions of CMS–265–94 and CMS–339. It is effective for cost reporting that begins or overlaps January 1, 2011. Providers of services participating in the Medicare program are required under sections 1815(a), 1833(e), 1861(v)(1)(A) and 1881(b)(2)(B) of the Social Security Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. The Form CMS–265–11 cost report is needed to determine the amount of reasonable cost due to the providers for furnishing medical services to Medicare beneficiaries; *Form Numbers:* CMS–265–11 and CMS–265–94 (OMB#: 0938–0236); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; Number *of Respondents:* 5,654 Total *Annual Responses:* 5,654; *Total Annual Hours:* 367,510 (For policy questions regarding this collection contact Gail Duncan at 410–786–7278. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *November 7, 2011.*

OMB, Office of Information and Regulatory Affairs,
Attention: CMS Desk Officer.
Fax Number: (202) 395–6974.
E-mail: *OIRA_submission@omb.eop.gov.*

Dated: October 4, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–26026 Filed 10–6–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8049–N]

Medicare Program; Establishment of the Medicare Economic Index Technical Advisory Panel and Request for Nominations for Members

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

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Medicare Economic Index Technical Advisory Panel and discusses the group's purpose and

charter. It also requests nominations for individuals to serve on the panel.

DATES: Nominations will be considered if we receive them at the appropriate address, provided in the **ADDRESSES** section of this notice, no later than 5 p.m., eastern day light time on November 7, 2011.

ADDRESSES: Send nominations to: Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore Maryland 21244–1850, Office of the Actuary, Mail stop N3–02–02, Attention: John Poisal.

FOR FURTHER INFORMATION CONTACT: John Poisal, (410) 786–6397. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

In the calendar year (CY) 2011 Physician Fee Schedule (PFS) proposed and final rules (75 FR 40095 and 75 FR 73274), we solicited and responded to comments regarding the convening of a technical advisory panel to review all aspects of the Medicare Economic Index (MEI), including the inputs, input weights, price-measurement proxies, and productivity adjustment. We noted that we would ask the panel to assess the relevance and accuracy of these inputs to current physician practices. The panel's analysis and recommendations will be considered for future rulemaking to ensure that the MEI accurately and appropriately meets its intended statutory purpose. We also solicited comments from the physician community and other interested members of the public on any other specific issues that should be considered by the technical panel.

The Secretary of the Department of Health and Human Services (the Secretary) is establishing a Medicare Economic Index Technical Advisory Panel under Public Law 92–463, Federal Advisory Committee Act, to conduct a technical review of the MEI.

II. Charter, General Responsibilities, and Composition of the Medicare Economic Index Technical Advisory Panel

A. Charter Information and General Responsibilities

On September 28, 2011, the Secretary signed the charter establishing the Medicare Economic Index Technical Advisory Panel (the Panel). The Panel will conduct a technical review of the MEI, including the inputs, input weights, price-measurement proxies, and productivity adjustment. The Panel will be asked to assess the relevance and accuracy of these inputs to current physician practices. Following the technical review meeting(s), the Panel shall issue a report that summarizes its recommendations for the MEI.

Meetings will be open to the public except when closure is specifically required by statute, and after all statutory and regulatory requirements for doing so have been met. The Secretary or other official to whom the authority has been delegated will make such determinations. Notice of all meetings will be given to the public via a **Federal Register** notice.

The Secretary will request that the Centers for Medicare & Medicaid Services (CMS) consider the Panel's recommendations for future rulemaking to ensure that the MEI accurately and appropriately meets its intended statutory purpose. The Panel will not consider issues such as replacing the price index with a cost index, or other issues that lie outside the limits of CMS' statutory authority, such as replacing the sustainable growth rate (SGR) formula with the MEI.

The Panel, as chartered under the legal authority of section 222 of the Public Health Service Act (42 U.S.C. 217a), is also governed by the provisions of the Public Law 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees, and the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(b).

The Panel will terminate 30 days after the date of submission of the final report to the Secretary, but no later than September 28, 2012.

You may view and obtain a copy of the Secretary's charter for the Panel at *https://www.cms.gov/FACA/.*

B. Composition of the Panel

The Panel will consist of not more than seven members, including the chair(s). The Panel may be composed of, but is not necessarily limited to, representatives of other government agencies (such as the Bureau of Labor Statistics and the Bureau of Economic Analysis), members of the Medicare Payment Advisory Commission, researchers, and other independent experts.

III. Submission of Nominations

We are requesting nominations for individuals to serve as members on the Panel. We will consider qualified individuals who are self-nominated or are nominated by agency officials, members of Congress, the general public, professional societies, trade associations, or other organizations. Non-federal employee members of the Panel will be appointed as Special Government Employees and will be required to go through an ethics review. The Secretary or the Secretary's designee will appoint members to serve on the Panel from amongst the candidates that we determine have the technical expertise to meet specific agency needs in a manner to ensure an appropriate balance of membership.

Any interested person may nominate one or more qualified individuals. Each nomination must include the name and contact information for both the nominator and nominee (if not the same).

To ensure that a nomination is considered, we must receive the nomination information by the date specified in the **DATES** section of this notice. Nominations should be mailed to the address specified in the **ADDRESSES** section of this notice.

Authority: 42 U.S.C 217a, section 222 of the Public Health Service Act.

Dated: September 29, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–26040 Filed 10–6–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Court Improvement Program.

OMB No.: 0970–0307.

Description

The Court Improvement Program (CIP) is composed of three grants, the basic, data, and training grants, governed by two separate Program Instructions (PIs). The training and data grants are governed by the ''new grant'' PI and the basic grant is governed by the ''basic grant'' PI. Current PIs require separate applications and program assessment reports for each grant. Every State applies for at least two of the grants annually and most States apply for all three. As many of the application requirements are the same for all three grants, this results in duplicative work and high degrees of repetition for State courts applying for more than one CIP grant.

The purpose of this Program Instruction is to streamline and simplify the application and reporting processes by consolidating the PIs into one single PI and requiring one single,

consolidated application (App) package and program assessment report (PAR) per State court annually. These revisions will satisfy statutory programmatic requirements and reduce both the number of required responses and associated total burden hours for State courts.

This new PI also describes programmatic and fiscal provisions and reporting requirements for the grants, specifies the application submittal and approval procedures for the grants for fiscal years 2012 through 2015, and identifies technical resources for use by State courts during the course of the grants. The agency uses the information received to ensure compliance with the statute and provide training and technical assistance to the grantees.

Respondents: Highest State Courts of Appeal.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
App	52	1	92	4784
PAR	52	1	86	4472
Estimated Total Annual Burden Hours:				9256

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project. *Fax:* 202–395–7285. *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–25954 Filed 10–6–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Tribal PREP Implementation Plan.

OMB No.: New.

Description: This request to collect information is for the Tribal PREP Implementation Plan, due by the 10th month of the first funding year (due by August 1, 2012). This plan will contain the description of how the grantee intends to structure, measure and evaluate the implementation of the project. Information contained in this Implementation Plan will enable the Program Office to provide the necessary technical assistance to help ensure that grantees are structuring Tribal PREP projects within the framework of evidence-based programming.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal PREP Plan	16	1	40	640

Estimated Total Annual Burden Hours: 640.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–25947 Filed 10–6–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0646]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Tobacco Products, Exemptions From Substantial Equivalence Requirements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of September 12, 2011 (76 FR 56200). The document announced that an information collection had been approved by the Office of Management and Budget (OMB). The document was published with an incorrect expiration date. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3208, Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–23184, appearing on page 56200, in the **Federal Register** of Monday, September 12, 2011, the following correction is made:

1. On page 56200, in the first column, under the **SUPPLEMENTARY INFORMATION** section, the sentence ''The approval expires on August 14, 2014.'' is corrected to read ''The approval expires on August 31, 2014.''

Dated: October 3, 2011.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2011–25967 Filed 10–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Antiviral 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: Antiviral 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 December 14, 2011, from 8 a.m. to 5 p.m. and on December 15, 2011, from 8 a.m. to 1 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/Advisory Committees/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 Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301 796–9001, FAX: 301 847–8533, e-mail: *AVAC@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. 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 and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 14 and 15, 2011, the committee will discuss pathways for the development of drugs intended to treat variola virus infection (smallpox) in the event of an outbreak, including the use of animal models of other orthopoxviruses (the group of viruses that includes smallpox) as potential evidence of efficacy.

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 30, 2011. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. on December 14, 2011. 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 21, 2011. 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 22, 2011.

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/Advisory Committees/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.)

Dated: October 4, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–25976 Filed 10–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

General and Plastic Surgery Devices Panel of the Medical Devices 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: General and Plastic Surgery Devices Panel of the Medical Devices 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 December 1, 2011, from 8 a.m. to 6 p.m.

Location: Hilton Washington, DC North/Gaithersburg, Salons A, B, C and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Avena Russell, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 1535, Silver Spring, MD 20993–0002, 301–796–3805, *Avena.Russell@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. 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 and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 1, 2011, the committee will discuss, make recommendations, and vote on information related to the premarket approval application, sponsored by Contura, Inc., for AQUAMID, a new material (polyacrylamide) for use as a dermal filler for aesthetic treatment of wrinkles in the face. The AQUAMID dermal filler is intended for use in mid-to-deep sub-dermal implantation for the aesthetic treatment of moderate to severe facial wrinkles and folds, such as the nasolabial folds. 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 22, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m., immediately following lunch. 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, 2011. 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, 2011.

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 AnnMarie Williams, Conference Management Staff, 301–796–5966, 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 4, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–25969 Filed 10–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0695]

Science of Abuse Liability Assessment; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop to discuss the science of abuse liability assessment. The Controlled Substance Staff (CSS) in FDA's Center for Drug Evaluation and Research, Office of the Center Director; the National Institute on Drug Abuse (NIDA) at the National Institutes of Health; and the College on Problems of Drug Dependence (CPDD) at the Temple University School of Medicine are cosponsoring the 1-day workshop.

Date and Time: The public workshop will be held on Thursday, November 10, 2011, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at The Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852, 301–881–2300, accessible on the Metro Red Line, Twinbrook Station.

Contact Person: Ellen B. Geller, CPDD, Temple University School of Medicine, 3400 North Broad Street, Philadelphia, PA 19140, 215–707–5307, e-mail: *ebgeller@temple.edu;* or Corinne P. Moody, Center for Drug Evaluation and Research, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5144, Silver Spring, MD 20993–0002, 301–796–5402, e-mail: *Corinne.moody@fda.hhs.gov.*

Accommodations: Attendees are responsible for their own accommodations. Reservations can be made on a space-available basis at The Legacy Hotel and Meeting Centre (see *Location*).

Registration: You are encouraged to register at your earliest convenience. A registration fee will be charged to help defray the costs of rental of the meeting spaces, meals and snacks provided, travel expenses incurred by invited speakers, and other costs. The registration fee is $325. Registration fees will be waived for invited speakers and administrative personnel.

The registration process, including payment of the registration fee, will be handled by CPDD. Additional information on the workshop, program agenda, and registration procedures is available on the Internet at *http://www.seiservices.com/nida/1014102/.* (FDA has verified the NIDA Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

If you need special accommodations due to a disability, please contact Ellen B. Geller or Corinne Moody (see *Contact Person*) at least 7 days in advance of the workshop.

Comments: FDA is holding this public workshop to obtain information about the science of abuse liability assessment. The workshop will center on status, needs, new approaches, and paradigms regarding preclinical studies, challenges associated with human subject abuse potential studies, and adverse events that signal abuse potential during clinical trials. The deadline for submitting comments about this public workshop is January 10, 2012.

Regardless of attendance at the public workshop, interested persons may submit either electronic or written comments regarding the issues presented at the workshop. Submit electronic comments 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. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed 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.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 27, 2010 (75 FR 4400), FDA announced the publication of a draft guidance for industry on ''Assessment of Abuse Potential of Drugs,'' and requested comments on the draft guidance. There were 23 submissions to the docket with approximately 750 comments received from academia, industry, and the government. General and specific comments were received on every section of the draft guidance. The comment period has closed and FDA is gathering current information that may relate to some of the comments received. Questions remain, for example, about when abuse potential studies should be conducted, and about the signals of abuse or potential abuse observed in clinical trials. This workshop is another mechanism for continuation of discussion with interested stakeholders before FDA finalizes the draft guidance.

Transcripts: Please be advised that as soon as a transcript is available it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: October 3, 2011.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2011–25918 Filed 10–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 76 FR 54236 dated August 31, 2011).

This notice reflects organizational changes to the Health Resources and Services Administration. Specifically, this notice updates the Office of Information Technology (RB5) functional statement. The update to the functional statement will better align functional responsibility with improved security management capabilities and improved alignment of current security initiatives within the Office of Information Technology (RB5).

Chapter RB5—Office of Information Technology

Section RB5–10, Organization

The Office of Information Technology (RB5) is headed by the Director and Chief Information Officer, who reports directly to the Chief Operating Officer.

Section RB5–20, Functions

(1) Delete the functional statement for the Office of the Director (RB5) and replace in its entirety; and (2) delete the functional statement for the Division of IT Operational Support Services (RB58) and replace in its entirety.

Office of the Director (RB5)

The Chief Information Officer (CIO) is responsible for the organization, management, and administrative functions necessary to carry out the responsibilities of the CIO including: (1) Provides organizational development, investment control, budget formulation and execution, policy development, strategic and tactical planning, and performance monitoring; (2) provides leadership in the development, review and implementation of policies and procedures to promote improved information technology management capabilities and best practices throughout HRSA; and (3) coordinates IT workforce issues and works closely with the departmental Office of Human Resources Management on IT recruitment and training issues.

The Chief Information Security Officer (CISO), reporting to the CIO, provides leadership for, and collaborates with, Agency staff to oversee the implementation of security and privacy policy in the management of their IT systems, and plans all activities associated with Federal Information Security Management Act (FISMA) or other agency security and privacy initiatives, and also carries out the responsibilities including: (1) Implements, coordinates, and administers security and privacy programs to protect the information resources of HRSA in compliance with legislation, Executive Orders, directives of the Office of Management and Budget (OMB), or other mandated requirements e.g., Presidential Decision Directive 63,

OMB Circular A–130, the National Security Agency, the Privacy Act, and other Federal agencies; (2) executes the Agency's Risk Management Program, evaluates and assists with the implementation of safeguards to protect major information systems, and IT infrastructure; (3) manages the development, implementation, and evaluation of the HRSA information technology security and privacy training program to meet the requirements as mandated by OMB Circular A–130, the Computer Security Act, and Privacy Act; (4) assesses all new emerging technologies and impact on technology integration on HRSA missions and program objectives; (5) provides leadership for strategic planning that leverages information systems security, program strategies, and advanced technology integration to achieve program objectives through innovative technology use; (6) the HRSA Incident Response Center (HIRC) provides a centralized, responsive resource for computer security incident reporting, management, and situational awareness of the Department's information security posture; (7) provides services include computer security situational awareness reports, computer forensics, cyber-related advisories, as well as cyber alerts, warnings, and Block/Watch lists are utilized and disseminated; (8) the HIRC coordinates with other Agencies and organizations for computer security and maintains a lab where new products are tested to insure that HRSA is utilizing state of the art, cutting edge technologies to ensure the secure operation of the HRSA infrastructure; and (9) provides leadership for ongoing cyber protection and incident detection response, reporting, and handling in accordance with OMB and departmental guidance.

Division of IT Operational Support Services (RB58)

The Division of IT Operational Support Services (ITOSS) (1) provides leadership, consultation, training, and management services for HRSA's enterprise computing environment; (2) directs and manages the support and acquisition of HRSA network and desktop hardware, servers, wireless communication devices, and software licenses; (3) is responsible for the HRSA Data Center and the operation and maintenance of a complex, high-availability network infrastructure on which mission-critical applications are made available 24 hours per day, 7 days per week; (4) controls infrastructure configuration management, installations and upgrades, security perimeter protection, and system resource access; (5) coordinates IT activities for Continuity of Operations Planning (COOP) Agency-wide including provisioning and maintaining IT infrastructure and hardware at designated COOP locations to support emergency and COOP requirements; (6) maintains workstation hardware and software configuration management controls; (7) the Chief Technology Officer (CTO), reporting to the ITOSS Division Director is responsible for assessing emerging technologies and the subsequent impact on current infrastructure restraints and program objectives; (8) coordinates and engages with all OIT Divisions and Branches to insure that advanced technology is being utilized to achieve program objectives through innovative technology use; and (9) provides leadership and establishes policy and provides oversight for Agency IT configuration management.

Section RB5–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: September 30, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–26007 Filed 10–6–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; A Generic Submission for Theory Development and Validation (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 2, 2011 (76 FR 46307) and allowed 60-days for public comment. No public comment were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: A Generic Submission for Theory Development and Validation (NCI). *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* In order to carry out NCI's legislative mandate to conduct and support research with respect to the causes and prevention of cancer, it is beneficial for NCI, through initiatives in the Behavioral Research Program (BRP), to conduct and support behavioral research informed by and informing theory. Formative research in the area of theory development and validation would provide the basis for developing effective cancer prevention and control strategies, allow for a better understanding of theoretical constructs that influence decisions and actions related to cancer, and ultimately contribute to reducing the U.S. cancer burden. Data collections that result from this generic clearance would inform and clarify the use of theory in BRP-supported initiatives and funding announcements. Specifically, this research would allow NCI to conduct research to: (1) Identify psychological, biobehavioral, demographic, and individual difference predictors of cancer prevention and control behaviors and outcomes; (2) Develop and refine integrative theories; (3) Identify and observe theoretical and innovative trends in cancer prevention and control research; and (4) Determine feasibility and usefulness of collaborative and multidisciplinary approaches to cancer prevention and control. *Frequency of Response:* Will be determined by each project. *Affected Public:* Individuals or households; Businesses or other for profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government. *Type of Respondents:* Members of the public including, but not limited to health professionals, physicians, and researchers. Table 1 outlines the estimated burden hours and cost required for a three-year approval of this generic submission.

TABLE A.12–1—ESTIMATES OF BURDEN HOURS FOR THREE YEARS

[Generic Study]

Type of respondents	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Total burden hours
General Public	2,000	1	15/60 (0.25)	500
Physicians	6,000	1	30/60 (0.5)	3,000
Health Professionals	1,000	1	60/60 (1)	1,000
Researchers	1,000	1	90/60 (1.5)	1,500
Total	11,500			6,000

Request For Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Richard P. Moser, Ph.D., Science of Research and Technology Branch, Behavioral Research Program, Division of Cancer Control and Population Sciences, National Cancer Institute/NIH, 6130 Executive Blvd., Rockville, MD 20892, call non-toll-free number 301–496–0273 or e-mail your request, including your address to: *moserr@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: October 3, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–26043 Filed 10–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Cancellation of Meeting

Notice is hereby given of the cancellation of the Interagency Breast Cancer and Environmental Research Coordinating Committee, October 12, 2011, 1 p.m. to 3 p.m., NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 which was published in the **Federal Register** on August 12, 2011, 76 FR 50234.

Dated: September 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26000 Filed 10–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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: Heart, Lung, and Blood Initial Review Group, Clinical Trials Review Committee.

Date: October 24–25, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A Cope, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.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 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25999 Filed 10–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is

hereby given of meetings of the National Cancer Institute Board of Scientific Advisors.

The meetings 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: National Cancer Institute Board of Scientific Advisors.

Date: November 6, 2011.

Time: 6:30 p.m. to 8:30 p.m.

Agenda: caBIG® Oversight Ad Hoc Subcommittee Meeting.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Persons: John Czajkowski, MPA, Deputy Director for Management, OD, and Paulette S. Gray, PhD, Director, DEA, National Cancer Institute, National Institutes of Health, 31 Center Drive, Rm. 11A48, Bethesda, MD 20892, 301–435–2455; 301–496–5147, respectively, *john.czajkowski@nih.gov; grayp@mail.nih.gov*, respectively.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: November 7, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Subcommittees, and Working Groups; and Budget Presentations; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Rm. 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa/bsa.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 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25998 Filed 10–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel, Clinical Trials.

Date: October 24, 2011.

Time: 9 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel, Review of Clinical Trials.

Date: October 27, 2011.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel, Clinical Trials.

Date: October 31, 2011.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 0892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel, Clinical Trials.

Date: November 3, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH, Chief, Scientific Review Branch, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel R03, Hearing and Balance.

Date: November 4, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review

Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel, Review of Clinical Trials.

Date: November 18, 2011.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH, Chief, Scientific Review Branch, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/sep/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25997 Filed 10–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee's State of Science Subcommittee meeting, November 29, 2011, 1 p.m. to 3 p.m., NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, which was published in the **Federal Register** on September 23, 2011, 76 FR 59147.

This notice is being amended to change the time of the November 29, 2011 State of Science Subcommittee meeting to 2 p.m. to 4 p.m. The meeting is open to the public.

Dated: September 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26041 Filed 10–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0710]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0001, Marine Casualty Information & Periodic Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; 1625–0013, Plan Approval and Records for Load Lines—Title 46 CFR Subchapter E.; 1625–0097, Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F; and 1625–0101, Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before November 7, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0710] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by e-mail via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical

utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2011–0710], and must be received by November 7, 2011. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0710], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2011–0710'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–710'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0001, 1625–0013, 1625–0097 and 1625–0101.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (76 FR 46824, August 3, 2011) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

1. *Title:* Marine Casualty Information & Periodic Chemical Drug and Alcohol Testing of Commercial Vessel Personnel.

OMB Control Number: 1625–0001.

Type of Request: Revision of a currently approved collection.

Respondents: Vessel owners and operators.

Abstract: Marine casualty information is needed for CG investigations of commercial vessel casualties involving death, vessel damage, etc., as mandated by Congress. Chemical testing information is needed to improve CG detection/reduction of drug use by mariners.

Forms: CG–2692, CG–2692A, CG–2692B.

Burden Estimate: The estimated burden has increased from 15,753 hours to 16,194 hours a year.

2. *Title:* Plan Approval and Records for Load Lines—Title 46 CFR Subchapter E.

OMB Control Number: 1625–0013.

Type of Request: Revision of a currently approved collection.

Respondents: Owners and operators of vessels.

Abstract: This information collection is required to ensure that certain vessels are not overloaded—as evidenced by the submerging of their assigned load line. In general, vessels over 150 gross tons or 24 meters (79 feet) in length engaged in commerce on international or coastwise voyages by sea are required to obtain a Load Line Certificate.

Forms: Not applicable.

Burden Estimate: The estimated burden has increased from 1,699 hours to 1,761 hours a year.

3. *Title:* Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 1625–0097.

Type of Request: Revision of a currently approved collection.

Respondents: Owners and builders of commercial vessels.

Abstract: This collection of information requires an owner or builder of a commercial vessel to submit to the U.S. Coast Guard for review and approval, plans pertaining to marine engineering systems to ensure that the vessel will meet regulatory standards.

Forms: None.

Burden Estimate: The estimated burden has increased from 3,312 hours to 3,695 hours a year.

4. *Title:* Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 1625–0101.

Type of Request: Revision of a currently approved collection.

Respondents: Owners and operators of certain tank vessels.

Abstract: The Oil Pollution Act of 1990 required the issuance of regulations related to the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. This collection of information is used to verify the structural integrity of older tank vessels.

Forms: None.

Burden Estimate: The estimated burden has decreased from 9,918 hours to 7,946 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: September 30, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–25971 Filed 10–6–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0902]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0004, United States Coast Guard Academy Application and Supplemental Forms. Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 6, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0902] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *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.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0902], and must be received by December 6, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0902], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2011–0902'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0902'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of

the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: United States Coast Guard Academy Application and Supplemental Forms.

OMB Control Number: 1625–0004.

Summary: This collection contains the application and all supplemental forms required to be considered as an applicant to the U.S. Coast Guard Academy.

Need: The information is needed to select applicants for appointment as Cadet, U.S. Coast Guard to attend the U.S. Coast Guard Academy.

Forms: CGA–14, CGA–14A, CGA–14B, CGA–14C, CGA–14D.

Respondents: Approximately 4,500 applicants apply annually to the U.S. Coast Guard Academy.

Frequency: Applicants must apply only once per year.

Burden Estimate: The estimated burden has decreased from 8,100 annual hours to 6,750 annual hours.

Dated: September 30, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–25956 Filed 10–6–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0728]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0018, Official Logbook. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before November 7, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0728] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *OIRA-submission@omb.eop.gov*.

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2011–0728], and must be received by November 7, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0728], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment

online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–0728'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0728'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0018.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (76 FR 46827, August 3, 2011) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Official Logbook.
OMB Control Number: 1625–0018.
Type of Request: Revision of a previously approved collection.
Respondents: Shipping companies.
Abstract: The Official Logbook contains information about the voyage, the vessel's crew, drills, watches, and operations conducted during the voyage. Official Logbook entries identify particulars of the voyage, including the name of the ship, official number, port of registry, tonnage, names and merchant mariner credential numbers of the master and crew, the nature of the voyage, and class of ship. In addition, it also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Official Logbooks, and miscellaneous entries.
Forms: CG–706B.
Burden Estimate: The estimated burden is 1750 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: September 30, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–25972 Filed 10–6–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0852]

Cook Inlet Regional Citizens' Advisory Council (CIRCAC) Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The purpose of this notice is to inform the public that the Coast Guard has recertified the Cook Inlet Regional Citizens' Advisory Council (CIRCAC) as an alternative voluntary advisory group for Cook Inlet, Alaska. This certification allows the CIRCAC to monitor the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by statute.

DATES: This recertification is effective for the period from September 1, 2011, through August 31, 2012.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Franklin, Seventeenth Coast Guard District (dpi); Telephone (907) 463–2821, e-mail *Michael.R.Franklin@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

On October 18, 1991, the President delegated his authority under 33 U.S.C. 2732(o) to the Secretary of Transportation in Executive Order 12777, section 8(g) (see 56 FR 54757; October 22, 1991) for purposes of certifying advisory councils, or groups, subject to the Act. On March 3, 1992, the Secretary redelegated that authority to the Commandant of the USCG (see 57 FR 8582; March 11, 1992). The Commandant redelegated that authority to the Chief, Office of Marine Safety, Security and Environmental Protection (G–M) on March 19, 1992 (letter #5402).

On July 7, 1993, the USCG published a policy statement, 58 FR 36504, to clarify the factors that shall be considered in making the determination as to whether advisory councils, or groups, should be certified in accordance with the Act.

The Assistant Commandant for Marine Safety and Environmental Protection (CG–5), redelegated recertification authority for advisory councils, or groups, to the Commander, Seventeenth Coast Guard District on February 26, 1999 (letter #16450).

On September 16, 2002, the USCG published a policy statement, 67 FR 58440, that changed the recertification procedures such that applicants are required to provide the USCG with comprehensive information every three years (triennially). For each of the two years between the triennial application procedure, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification.

Further, public comment is not solicited prior to recertification during streamlined years, only during the triennial comprehensive review.

Discussion of Comments

On July 18, 2011, the USCG published a Notice of Availability; request for comments for recertification of the Cook Inlet Regional Citizens' Advisory Council in the **Federal Register** (76 FR 42134). We received 15 letters commenting on the proposed action. No public meeting was requested, and none was held. Of the 15 letters received, 14 were in support of the CIRCAC application for recertification. These letters in support of the recertification consistently cited CIRCAC's broad representation of the respective community's interests, appropriate actions to keep the public informed, improvements to both spill response preparation and spill prevention, and oil spill industry monitoring efforts that combat complacency—as intended by the Act. One comment recommended against recertification and expressed concern that CIRCAC did not represent the communities and interests of Cook Inlet and that the CIRCAC did not promote environmentally safe marine transportation and oil facility operations. All comments were taken into consideration, together with the information provided with the CIRCAC 2011 application for recertification, and the totality of the comments and information provided establishes that the CIRCAC satisfies the requirements necessary to obtain recertification under the Act, 33 U.S.C. 2732 *et seq.*

Recertification

By letter dated September 14, 2011, the Commander, Seventeenth Coast Guard District certified that the CIRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on August 31, 2012.

Dated: September 15, 2011.

Thomas P. Ostebo,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2011–25973 Filed 10–6–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0015]

Agency Information Collection Activities: Proposed Collection; Comment Request, OMB No. 1660–0002; Disaster Assistance Registration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Disaster Assistance Registration process.

DATES: Comments must be submitted on or before December 6, 2011.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2011–0015. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2011–0015 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Quintanilla, Supervisory Program Specialist, FEMA, Recovery Directorate, (504) 686–3603 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288) (the Stafford Act), as amended, is the legal basis for the Federal Emergency Management Agency (FEMA) to provide financial needs and services to individuals who apply for disaster assistance benefits in the event of a federally declared disaster. Regulations in title 44 Code of Federal Regulations (CFR), Subpart D, ''Federal Assistance to Individuals and Households'', implement the policy and procedures set forth in section 408 of the Stafford Act, 42 U.S.C. 5174, as amended. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have uninsured or under-insured, damage, necessary expenses, and serious needs which are not covered through other means.

Individuals and households may apply for assistance under the Individuals and Households program via telephone or Internet. FEMA utilizes paper forms 009–0–1 (English) Disaster Assistance Registration or FEMA Form 009–0–2 (Spanish), Solicitud/Registro Para Asistencia De Resastre to register individuals.

FEMA provides direct assistance to eligible applicants pursuant to the requirements in 44 CFR 206.117. To receive direct assistance for housing (*e.g.,* mobile home or travel trailer) from FEMA, the applicant is required to acknowledge and accept the conditions for occupying government property. The form used is the Declaration and Release; FEMA Form 009–0–4, or the Declaración Y Autorización; FEMA Form 009–0–5 Receipt for Government Property. In addition, the applicant is required to acknowledge that he or she has been informed of the conditions for continued direct housing assistance. To accomplish these notifications, FEMA uses the applicant's household composition data in National Emergency Management Information System NEMIS to prepare a Receipt for Government Property FEMA Form 009–0–5, or Recibo de Propiedad del Gobierno FEMA Form 009–0–6.

Federal public benefits are to be provided to U.S. citizens, non-citizen nationals, or qualified aliens. A parent or guardian of a minor child may be eligible for disaster assistance if the

minor child is a U.S. citizen, non-citizen national, or qualified alien, and the minor child lives with the parent or guardian. *See* 8 U.S.C. 1601–1646.

By signing FEMA Forms 009–0–3, Declaration and Release or 009–0–4, Declaración Y Autorización an applicant or a member of the applicant's household is attesting to being a U.S. citizen, non-citizen national, or qualified alien. A parent or guardian of a minor child signing FEMA Forms 009–0–3, Declaration and Release or 009–0–4, Declaración Y Autorización is attesting that the minor child is a U.S. citizen, non-citizen national, or qualified alien.

Collection of Information

Title: Disaster Assistance Registration.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0002.

Form Titles and Numbers: FEMA Form 009–0–1T (English) Tele-Registration, Disaster Assistance Registration; FEMA Form 009–0–1Int (English) Internet, Disaster Assistance Registration; FEMA Form 009–0–2Int (Spanish) Internet, Registro Para Asistencia De Desastre; FEMA Form 009–0–1 (English) Paper Application/Disaster Assistance Registration; FEMA Form 009–0–2 (Spanish), Solicitud en Papel/Registro Para Asistencia De Desastre; FEMA Form 009–0–1S (English) Smartphone, Disaster Assistance Registration; FEMA Form 009–0–2S (Spanish) Smartphone, Registro Para Asistencia De Desastre; FEMA Form 009–0–3 (English), Declaration and Release; FEMA Form 009–0–4 (Spanish), Declaración Y Autorización; FEMA Form 009–0–5 (English) Receipt for Government Property; FEMA Form 009–0–6 (Spanish) Recibo de la Propiedad del Gobierno.

Abstract: The Disaster Assistance Registration form is used to collect pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster or emergency, have uninsured or under-insured, necessary or serious expenses that they are unable to meet through other means.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 555,009 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or Households.	Tele-Registration Application for Disaster Assistance (English)/ FEMA Forms 009–0–1T.	1,151,255	1	1,151,255	0.3 (18 mins.)	345,377	$30.66	$10,589,258
Individuals or Households.	Internet Application for Disaster Assistance (English and Spanish)/ FEMA Forms 009–0–1Int and 009–0–2Int.	323,039.80	1	323,039.80	0.3 (18 mins.)	96,912	30.66	2,971,321.90
Individuals or Households.	Paper Application for Disaster Assistance (English and Spanish)/ FEMA Forms 009–0–1 and 009–0–2.	51,549	1	51,549	0.3 (18 mins.)	15,465	30.66	474,156.90
Individuals or Households.	Smartphone Application for Disaster Assistance/FEMA Forms (English and Spanish) 009–0–1S and 009–0–2S.	192,447.20	1	192,447.20	.3 (18 mins.)	57,734	30.66	1,770,124.40
Individuals or Households.	Declaration and Release (English and Spanish)/ FEMA Forms 009–0–3 and 009–0–4.	1,099,706	1	1,099,706	.033 (2 mins.)	36,657	30.66	1,123,903.60
Individuals or Households.	Receipt of Government Property (English and Spanish)/FEMA Form 009–0–5 and 009–0–6.	17,183	1	17,183	.1 (10 mins)	2,864	30.66	87,810.24
Total	.....	2,835,180	.....	2,835,180	.....	555,009	.....	17,016,572.24

Estimated Cost: There are no operation and maintenance, or capital and start-up costs associated with this collection of information.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of

information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: September 30, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–25978 Filed 10–6–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Ethernet Switches

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain Ethernet switches. Based upon the facts presented, CBP has concluded that the programming operations performed in the United States, using U.S.-origin software, substantially transform the non-TAA country switches. Therefore, the country of origin of the switches is the United States for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 4, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before November 7, 2011.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 4, 2011, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR Part 177, subpart B), CBP issued a final determination concerning the country of origin of Ethernet switches which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H175415, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the programming operations performed in the United States, using U.S.-origin software, substantially transform the non-TAA country Ethernet switches. Therefore, the country of origin of the switches is the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: October 4, 2011.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

October 4, 2011

HQ H175415

MAR OT:RR:CTF:VS H175415 HkP

CATEGORY: Origin

Josephine Aiello LeBeau, Esq.
Anne Seymour, Esq.
Wilson Sonsini Goodrich & Rosati, PC
1700 K Street, NW, Fifth Floor
Washington, DC 20006–3817

RE: U.S. Government Procurement; Country of Origin of Local Area Network Switches; Substantial Transformation

Dear Ms. LeBeau and Ms. Seymour:

This is in response to your letter, dated July 6, 2011, requesting a final determination on behalf of Arista Networks, Inc. (''Arista''), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Arista's 7048, 7050, 7100, 7124, and 7500 series (''7 Series'') local area network (''LAN'') switches. We note that as a U.S. importer, Arista is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Arista is importing 7 Series Ethernet switches assembled in China. The switches are designed to interconnect servers and storage appliances in data centers. Each switch consists of one or more printed circuit board assembly (''PCBAs''), chassis, top cover, power supply, and fans. After importation, the switches will be programmed with U.S.-origin software.

The following operations occur in China:

1. The chassis and top cover are manufactured from sheet metal.
2. The PCB is populated with various electronic components to make a PCBA.
3. The PCBA is tested to ensure functionality.
4. The power supply and fans are installed in the chassis.
5. The PCBA is installed in the chassis.
6. The chassis and top cover are assembled together.
7. The serial numbers of the components are entered into the data tracking system, and the switch is packaged and shipped to the United States.

The following operations occur in the United States:

1. U.S.-origin EOS™ software is downloaded onto the flash memory on the PCBA.
2. The switch is tested, packaged, and prepared for shipping.

Arista's EOS™ (Extensible Operating System) software is designed to provide switching functionality, secure administration, and reliability, and to optimize network management. Specifically, EOS software provides the following capabilities and benefits to Ethernet switches: in-service software upgrade, software fault containment, fault repair, security exploit containment, and scalable management interface. According to your submission, the units imported from China could not function as network switches without this software, which was developed in the United States at considerable cost to Arista. Since 2005, more than 140

software engineers have continued to develop the software and more than 80 percent of Arista's Research and Development spending has been on EOS software development.

ISSUE:

What is the country of origin of the Arista's 7 Series Ethernet switches for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In *Data General v. United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its ''memory'' which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in ''designing and building hardware.'' While replicating the program pattern from a ''master'' PROM may be a quick one-step process, the development of the pattern and the production of the ''master'' PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States,* 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a ''mixed question of technology and customs law.''

In C.S.D. 84–85, 18 Cust. B. & Dec. 1044, CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming; … [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter (''HQ'') 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); and, HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imports it).

You believe that under the manufacturing scenario described in the FACTS section above, Arista's 7 Series Ethernet switches are products of the United States. You argue that without the EOS software, the units exported from China lack the intelligence to perform as network switches. In fact, you claim that the EOS software gives the switches their essential character by providing network switching and routing functionality, management functions, network performance monitoring, security and access control, and by allowing interaction with other switches. Further, programming the switches with the EOS software creates a permanent change in the PCBAs that cannot be undone by third parties during the normal course of business. The only reprogramming operation that may be performed during the normal course of business is either updating the installed software or entering licensing keys that enable the activation of additional EOS software features. In support of your position, you cite *Data General* (*supra*), HQ H052325 (Feb. 14, 2006) and HQ 735027 (Sept. 7, 1993), among others.

HQ H052325 concerned the country of origin of a switch and a switch/router. The Brocade 7800 Extension Switch was assembled to completion in China and programmed in the U.S. with U.S.-origin operating system (OS) software and customer specified firmware and software. The Brocade FX8–24 switch/router contained a PCBA that was assembled and programmed in China and shipped to the U.S., where it was assembled with other components to make the final product. The completed unit was then programmed with U.S.-origin OS software and customer firmware and software. In both cases, the U.S.-origin OS software provided the devices with their functionality. Customs found that in both cases, the processing performed in the United States, including the downloading of the U.S.-origin OS software, resulted in a substantial transformation of the foreign origin components, and that the United States was the country of origin.

In HQ H014068, dated October 9, 2007, CBP determined that a cellular phone designed in Sweden, assembled in either China or Malaysia and shipped

to Sweden, where it was loaded with software that enabled it to test equipment on wireless networks, was a product of Sweden. Once the software was installed on the phones in Sweden, they became devices with a new name, character and use, that is, network testing equipment. As a result of the programming operations performed in Sweden, CBP found that the country of origin of the network testing equipment was Sweden.

In this case, hardware components are assembled into complete Ethernet switches in China. The switches are then shipped to the U.S., where they are programmed with EOS software, developed in the U.S. at significant cost to Arista and over many years. Since 2005, more than 140 software engineers have continued to develop the software and more than 80 percent of Arista's Research and Development spending has been on EOS software development. The U.S.-origin EOS software enables the imported switches to interact with other network switches through network switching and routing, and allows for the management of functions such as network performance monitoring and security and access control. Without this software, the imported devices could not function as Ethernet switches. As a result of the programming performed in the U.S., with software developed in the U.S., the imported switches are substantially transformed in the U.S. *See Data General,* C.S.D. 84–85, HQ 052325, HQ 558868, HQ 735027, and HQ 733085. The country of origin of the switches is the United States.

Please be advised, however, that whether the switches may be marked ''Made in the U.S.A.'' or with similar words, is an issue under the authority of the Federal Trade Commission (''FTC''). We suggest that you contact the FTC, Division of Enforcement, 6th and Pennsylvania Avenue, NW, Washington, DC 20508, on the propriety of markings indicating that articles are made in the United States.

HOLDING:

Based on the facts provided, the programming operations performed in the United States impart the essential character to Artista's 7 Series Ethernet switches. As such, the switches will be considered products of the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director
Regulations and Rulings Office of International Trade

[FR Doc. 2011–25991 Filed 10–6–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5546–D–01]

Delegation of Authority to the Office of Disaster Management and National Security

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of Authority.

SUMMARY: Through this notice, the Secretary delegates authority to the Chief Disaster and National Security Officer, Office of Disaster Management and National Security.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Laura L. McClure, Acting Chief Disaster and National Security Officer, Office of Disaster Management and National Security, Department of Housing and Urban Development, 451 7th Street, SW., Room 10170, Washington, DC 20410–6000, telephone number 202–402–6300 (this is not a toll free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The Secretary of HUD hereby delegates to the Chief Disaster and National Security Officer authority and responsibility to advise HUD departmental leadership on all aspects of disaster and national security preparedness, response, and recovery; to identify and mitigate risks; to improve departmentwide capacity, coordination, and support for disaster management and national security; and to ensure that HUD's security and disaster management programs support national objectives and the security of the United States while supporting HUD's mission. In carrying out this responsibility, the Chief Disaster and National Security Officer shall, among other duties:

1. Assess, coordinate and improve execution of the Department's disaster management and national security programs.
2. Represent the Department's interests in interagency committees and groups that address disaster management, national security, law enforcement, and the protective service detail.
3. Develop criteria to assess and help improve disaster and national security preparedness, response, and recovery and develop policy, program options, and recommendations together with key program offices.
4. Develop and coordinate crosscutting disaster and national security policies, programs, and plans that improve departmental preparedness, response, and recovery including implementation of the National Response Framework, National Continuity Policy, and Presidential Decision and National Security Directives.
5. Integrate current and future disaster and national security programs into departmentwide response effort.
6. Manage and support the Department's Protective Services functions and related investigation and law enforcement liaison functions.
7. Manage access to and protect HUD classified programs and information and maintain and operate classified systems.

Section A. Authority Delegated

The Secretary hereby delegates all authority pursuant to the following authorities to the Chief Disaster and National Security Officer:

1. *Federal Law Enforcement and Personal Security Protection.* Authority for providing personal security protection for the Secretary, Deputy Secretary, and their immediate families, as warranted, including authorities set forth in 28 U.S.C. 566(c), 566(d), 566(e), 561(a), 561(f), 561(g), 564, 509, 510; 28 CFR 0.111, 0.112, 0.113; and 18 U.S.C. 115(a)(1), 351, 3053. Authority for law enforcement and noncriminal investigations and enforcement of HUD Handbook 0752.2, Adverse Action, including authority under 42 U.S.C. 3535(d).

2. *National Security and Operations.* Authority to execute and support departmental preparedness activities pursuant to White House and Department of Homeland Security guidance and requirements, including but not limited to: Homeland Security Presidential Directive—20: *National Continuity Policy* (2007), Federal Continuity Directive 1: *Federal Executive Branch National Continuity Program and Requirements* (2008), and

Federal Continuity Directive 2: *Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process* (2008). Guidance and requirements for operations, including, but not limited to Homeland Security Presidential Directive—5: *Management of Domestic Incidents* (2003) and the National Communications System Directive 3–10: *Minimum Requirements for Continuity Communications Capabilities* (2007), which was issued by DHS on behalf of the Office of Science, Technology, and Policy in the Executive Office of the President. This area also includes authority to implement guidance and requirements for test, training, and exercises under the Presidential Policy Directive 8: *National Preparedness* (2011), the National Preparedness Goal, and the National Exercise Plan, including required participation in exercises.

3. *Response and Recovery.* Authority to execute and support departmental response and recovery activities pursuant to White House and Department of Homeland Security guidance and requirements, including but not limited to: Homeland Security Presidential Directive-5: Management of Domestic Incidents (2003), the National Response Framework (2008), the National Incident Management System (2004), and the National Disaster Recovery Framework (currently under development).

Section B. Authority To Redelegate

The Chief Disaster and National Security Officer may redelegate to employees of HUD any of the authority delegated under Section A above.

Section C. Authority Superseded

The Secretary may revoke the authority authorized herein, in whole or part, at any time.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–26046 Filed 10–6–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5580–N–01]

HUD Draft Environmental Justice Strategy

AGENCY: Office of the Sustainable Housing and Communities, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD announces the release of its draft Environmental Justice Strategy for review and comment.

DATES: *Comment Due Date:* November 14, 2011. Comments may be submitted to *EJStrategy@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Kathryn Dykgraaf Office of Sustainable Housing and Communities, Department of Housing and Urban Development, 451 7th Street, SW., Room, Washington, DC 20410; telephone number 202–402–6731 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION

I. Background

HUD is committed to meeting the goals of Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' which states that each federal agency, with the law as its guide, should make environmental justice part of its mission. In this regard, HUD has developed its draft Environmental Justice Strategy (EJ Strategy). HUD's EJ Strategy is a four-year plan to address environmental justice concerns and increase access to environmental benefits through HUD policies, programs, and activities. HUD's EJ strategy can be found at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities/HUD_Draft_Environmental_Justice_Strategy.*

The release of the draft is the latest step in a larger Administration-wide effort to ensure strong protection from environmental and health hazards for all Americans. In August, federal agencies signed the ''Memorandum of Understanding on Environmental Justice and Executive Order 12898'' (EJ MOU), which committed each agency to, among other things, finalizing an EJ strategy and releasing annual implementation reports. Links to the other federal EJ Strategies can be found on the Environmental Justice Interagency Workgroup Web page at *http://www.epa.gov/environmentaljustice/interagency/index.html.* Links will be available by Friday, October 7th.

HUD's draft EJ Strategy will be open for public until November 14, 2011. Comments can be submitted by e-mailing *EJStrategy@hud.gov.* HUD will review the comments submitted, and is targeting finalization of the strategy by February 2012. After the strategy is issued in final, HUD and its federal partners will continue to engage stakeholders through outreach, education and stakeholder events and respond to public comments through annual implementation reports.

Dated: September 30, 2011.

Shelley R. Poticha,

Director.

[FR Doc. 2011–25938 Filed 10–6–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the

three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street, NW., Washington, DC 20314; (202) 761–5542; *GSA:* Mr. John E.B. Smith, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street, NW., Room 7040, Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave., NW., 4th Floor, Washington, DC 20006: (202) 254–5522; *Navy:* Mr. Albert Johnson, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305 (These are not toll-free numbers).

Dated: September 29, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/07/2011

Suitable/Available Properties

Building

Missouri

FAA NDB Facility
N. Farm Rd. 95
Willard MO
Landholding Agency: GSA
Property Number: 54201120012
Status: Surplus
GSA Number: 7–U–MO–0689
Comments: 48 sq. ft., recent use: electrical equipment storage, chain-link fence surrounds property

Montana

Boulder Admin. Site
12 Depot Hill Rd.
Boulder MT 59632
Landholding Agency: GSA
Property Number: 54201130016
Status: Excess
GSA Number: 7–A–MT–532–AA
Comments: 4,799 sq. ft.; recent use: office, repairs are needed

South Dakota

Main House
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130011
Status: Surplus
GSA Number: 7–A–0523–3–AE
Comments: Off-site removal only; the property is a 2-story structure with 1,024 sq. ft. per floor for a total of 2,048 sq. ft.; structure type: Log Cabin; recent use: residential

Main Garage
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130012
Status: Surplus
GSA Number: 7_A–SD–0523–3–AF
Comments: Off-site removal only; 567 sq. ft.; structure type: Log Frame; recent use: vehicle storage

Metal Machine/Work Bldg.
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130013
Status: Surplus
GSA Number: 7–A–SD–0523–3–AG
Comments: Off-site removal only; 3,280 sq. ft.; structure type: Post/Pole w/Metal Siding; recent use: utility shed

Mobile Home
Lady C Ranch Rd.
Hot Springs SD 57477
Landholding Agency: GSA
Property Number: 54201130014
Status: Surplus
GSA Number: 7–A–0523–3–AH
Comments: Off-site removal only; 1,152 sq. ft.; structure type: manufactured home/double wide; recent use: residential

Mobile Home Garage
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130015
Status: Surplus
GSA Number: 7–A–SD–0523–3–AI
Comments: Off-site removal only; 729 sq. ft.; structure type: Post/Pole construction w/metal side; recent use: storage

Washington

2 Bldgs.
Bureau of Reclamation
Sunnyside WA
Landholding Agency: Interior
Property Number: 61201130003
Status: Excess
Directions: Storehouse and Lumber Shed
Comments: Off-site removal only for both bldgs.; Storehouse: 4,400 sq. ft.; Lumber Shed: 800 sq. ft.; bldgs. in poor condition—need repairs; lead-base paint is present in bldgs.

Suitable/Available Properties

Land

New Mexico

FAA RML Facility—West Mesa
Lost Horizon Drive
Albuquerque NM
Landholding Agency: GSA
Property Number: 54201120013
Status: Surplus
GSA Number: 7–U–NM–0486–6
Comments: 0.3462 acres, recent use: FAA RML Facility, chain-link fence surrounds property

North Dakota

Vacant Land of MSR Site
Stanley Mickelsen

Nekoma ND
Landholding Agency: GSA
Property Number: 54201130009
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: 20.2 acres; recent use: unknown

Suitable/Unavailable Properties

Building

Arizona

Willcox Patrol Station
200 W. Downew Street
Willcox AZ 85643–2742
Landholding Agency: GSA
Property Number: 54201110004
Status: Surplus
GSA Number: 9–X–AZ–0860
Comments: 2,448 sq. ft., most recent use: detention facility

California

Defense Fuel Support Pt.
Estero Bay Facility
Morro Bay CA 93442
Landholding Agency: GSA
Property Number: 54200810001
Status: Surplus
GSA Number: 9–N–CA–1606
Comments: former 10 acre fuel tank farm w/ associated bldgs/pipelines/equipment, possible asbestos/PCBs

Former SSA Bldg.
1230 12th Street
Modesto CA 95354
Landholding Agency: GSA
Property Number: 54201020002
Status: Surplus
GSA Number: 9–G–CA–1610
Comments: 11,957 sq. ft., needs rehab/ seismic retrofit work, potential groundwater contamination below site, potential flooding

Georgia

Fed. Bldg. Post Office/Court
404 N. Broad St.
Thomasville GA 31792
Landholding Agency: GSA
Property Number: 54201110006
Status: Surplus
GSA Number: 4–G–GA–878AA
Comments: 49,366 total sq. ft. Postal Svc currently occupies 11,101 sq. ft. through Sept. 30, 2012. Current usage: gov't offices, asbestos has been identified as well as plumbing issues.

Illinois

1LT A.J. Ellison
Army Reserve
Wood River IL 62095
Landholding Agency: GSA
Property Number: 54201110012
Status: Excess
GSA Number: 1–D–II–738
Comments: 17,199 sq. ft. for the Admin. Bldg., 3,713 sq. ft. for the garage, public space (roads and hwy) and utilities easements, asbestos and lead base paint identified most current use: unknown.

Iowa

U.S. Army Reserve
620 West 5th St.
Garner IA 50438
Landholding Agency: GSA
Property Number: 54200920017
Status: Excess
GSA Number: 7–D–IA–0510
Comments: 5743 sq. ft., presence of lead paint, most recent use—offices/classrooms/ storage, subject to existing easements

Maryland

Appraisers Store
Baltimore MD 21202
Landholding Agency: GSA
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Comments: 169,801 sq. ft., most recent use—federal offices, listed in the Natl Register of Historic Places, use restrictions

Michigan

Social Security Bldg.
929 Stevens Road
Flint MI 48503
Landholding Agency: GSA
Property Number: 54200720020
Status: Excess
GSA Number: 1–G–MI–822
Comments: 10,283 sq. ft., most recent use—office

CPT George S. Crabbe USARC
2901 Webber Street
Saginaw MI
Landholding Agency: GSA
Property Number: 54201030018
Status: Excess
GSA Number: 1–D–MI–835
Comments: 3891 sq. ft., 3-bay garage maintenance building

Mississippi

James O. Eastland
245 East Capitol St.
Jackson MS 39201–2409
Landholding Agency: GSA
Property Number: 54201040020
Status: Excess
GSA Number: 4–G–MS–0567–AA
Directions: Federal Bldg. and Courthouse
Comments: 14,000 sq. ft., current/recent use: gov't offices and courtrooms, asbestos identified behind walls, and historic bldg. preservation covenants will be included in the Deed of Conveyance

Missouri

Federal Bldg/Courthouse
339 Broadway St.
Cape Girardeau MO 63701
Landholding Agency: GSA
Property Number: 54200840013
Status: Excess
GSA Number: 7–G–MO–0673
Comments: 47,867 sq. ft., possible asbestos/ lead paint, needs maintenance & seismic upgrades, 30% occupied—tenants to relocate within 2 yrs

New Hampshire

Federal Building
719 Main St.
Parcel ID: 424–124–78
Laconia NH 03246
Landholding Agency: GSA
Property Number: 54200920006
Status: Excess
GSA Number: 1–G–NH–0503
Comments: 31,271 sq. ft., most recent use—office bldg., National Register nomination pending

New Jersey

Camp Petricktown Sup. Facility
US Route 130
Pedricktown NJ 08067
Landholding Agency: GSA
Property Number: 54200740005
Status: Excess
GSA Number: 1–D–NJ–0662
Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/ quarters/admin., may be issues w/right of entry, utilities privately controlled, contaminants

Ohio

Oxford USAR Facility
6557 Todd Road
Oxford OH 45056
Landholding Agency: GSA
Property Number: 54201010007
Status: Excess
GSA Number: 1–D–OH–833
Comments: office bldg./mess hall/barracks/ simulator bldg./small support bldgs., structures range from good to needing major rehab

Belmont City Memorial USAR Ctr
5305 Guernsey St.
Bellaire OH 43906
Landholding Agency: GSA
Property Number: 54201020008
Status: Excess
GSA Number: 1–D–OH–837
Comments: 11,734 sq. ft.—office/drill hall; 2,519 sq. ft.—maint. shop

Army Reserve Center
5301 Hauserman Rd.
Parma OH 44130
Landholding Agency: GSA
Property Number: 54201020009
Status: Excess
GSA Number: I–D–OH–842
Comments: 29, 212, and 6,097 sq. ft.; most recent use: office, storage, classroom, and drill hall; water damage on 2nd floor; and wetland property

Oregon

3 Bldgs/Land
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Landholding Agency: GSA
Property Number: 54200840003
Status: Excess
GSA Number: 9–D–OR–0768
Comments: 14000 sq. ft. each/2626 acres, most recent use—radar site, right-of-way

U.S. Customs House
220 NW 8th Ave.
Portland OR
Landholding Agency: GSA
Property Number: 54200840004
Status: Excess
GSA Number: 9–D–OR–0733
Comments: 100,698 sq. ft., historical property/National Register, most recent use—office, needs to be brought up to meet earthquake code and local bldg codes, presence of asbestos/lead paint

South Carolina

Naval Health Clinic
3600 Rivers Ave.
Charleston SC 29405
Landholding Agency: GSA

Property Number: 54201040013
Status: Excess
GSA Number: 4–N–SC–0606
Comments: Redetermination: 399,836 sq. ft., most recent use: office

Virginia

Tract 05–511, Qrts. 11
7941 Brock Rd.
Spotsylvania VA 22553
Landholding Agency: GSA
Property Number: 54201110001
Status: Excess
GSA Number: 4–I–VA–0756
Comments: 1642 sq. ft., off-site removal only, previously reported by Interior and published as suitable/available in the 10.22.2010 FR

Washington

Fox Island Naval Lab
630 3rd Ave.
Fox Island WA 98333
Landholding Agency: GSA
Property Number: 54201020012
Status: Surplus
GSA Number: 9–D–WA–1245
Comments: 6405 sq. ft.; current use: office and lab

West Virginia

Naval Reserve Center
841 Jackson Ave.
Huntington WV 25704
Landholding Agency: GSA
Property Number: 54200930014
Status: Excess
GSA Number: 4–N–WV–0555
Comments: 31,215 sq. ft., presence of asbestos/lead paint, most recent use—office

Harley O. Staggers Bldg.
75 High St.
Morgantown WV 26505
Landholding Agency: GSA
Property Number: 54201020013
Status: Excess
GSA Number: 4–G–WV–0557
Comments: 57,600 sq. ft; future owners must maintain exposure prevention methods (details in deed); most recent use: P.O. and federal offices

Suitable/Unavailable Properties

Land

Arizona

0.23 acres
87th Ave.
Glendale AZ
Landholding Agency: GSA
Property Number: 54201010005
Status: Excess
GSA Number: 9–I–AZ–853
Comments: 0.23 acres used for irrigation canal

Guadalupe Road Land
Ironwood Road
Apache Junction AZ 95971
Landholding Agency: GSA
Property Number: 54201010012
Status: Surplus
GSA Number: 9–AZ–851–1
Comments: 1.36 acres, most recent use—aqueduct reach

Land
95th Ave/Bethany Home Rd
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201010014
Status: Surplus
GSA Number: 9–AZ–852
Comments: 0.29 acre, most recent use—irrigation canal

0.30 acre
Bethany Home Road
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201030010
Status: Excess
GSA Number: 9–I–AZ–0859
Comments: 10 feet wide access road

California

Parcel F–2 Right of Way
null
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201030012
Status: Surplus
GSA Number: 9–N–CA–1508–AI
Comments: Correction: 631.62 sq. ft., encroachment

Parcel F–4 Right of Way
null
Seal Beach CA
Landholding Agency: GSA
Property Number: 54201030014
Status: Surplus
GSA Number: 9–N–CA–1508–AK
Comments: 126.32 sq. ft., within 3 ft. set back required by City

Drill Site #3A
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040004
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #4
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040005
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Comments: 2.21 acres, mineral rights, utility easements

Drill Site #6
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040006
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Comments: 2.13 acres, mineral rights, utility easements

Drill Site #9
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040007
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #20
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040008
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #22
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040009
Status: Surplus
GSA Number: 9–B–CA–1673–AF
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #24
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040010
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Comments: 2.06 acres, mineral rights, utility easements

Drill Site #26
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040011
Status: Surplus
GSA Number: 9–B–CA–1673–AA
Comments: 2.07 acres, mineral rights, utility easements

Massachusetts

FAA Site
Massasoit Bridge Rd.
Nantucket MA 02554
Landholding Agency: GSA
Property Number: 54200830026
Status: Surplus
GSA Number: MA–0895
Comments: approx 92 acres, entire parcel within MA Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program

Missouri

FAA
North Congress Ave & 110th St.
Kansas City MO 64153
Landholding Agency: GSA
Property Number: 54201110005
Status: Surplus
GSA Number: 7–U–MO–0688
Comments: Correction from 02/25/2011 **Federal Register**: .23 acres, legal constraint: utility easement only, current use: vacant land; move to unavailable; expression of interest received

Pennsylvania

approx. 16.88
271 Sterrettania Rd.
Erie PA 16506
Landholding Agency: GSA
Property Number: 54200820011
Status: Surplus
GSA Number: 4–D–PA–0810
Comments: vacant land

Texas

FAA Outermarker—Houston
null
Spring TX 77373
Landholding Agency: GSA
Property Number: 54201040001
Status: Surplus

GSA Number: 7–U–TX–1110
Comments: 0.2459 acres, subject to restrictions/regulations regarding the Houston Intercontinental Airport, may not have access to a dedicated roadway

Unsuitable Properties

Building

Connecticut

Bldg. 20
Naval Submarine Base
Groton CT
Landholding Agency: Navy
Property Number: 77201130020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area

Hawaii

Facility 254
Joint Base Pearl Harbor Hickam
JBPHH HI
Landholding Agency: Navy
Property Number: 77201130019
Status: Excess
Reasons: Extensive deterioration, Secured Area

Maine

Bldg. 547
SERE
Rangeley ME
Landholding Agency: Navy
Property Number: 77201130022
Status: Excess
Comments: Asbestos present
Reasons: Contamination, Extensive deterioration, Secured Area

New Jersey

13 Bldgs.
Trng Ctr-Storage Sheds
Cape May NJ 08204
Landholding Agency: COE
Property Number: 31201130009
Status: Excess
Directions: 1740, 1741, 1750, 1760, 1761, 1710, 1711, 1720, 1724, 1730, 1731, 1734, 1754
Reasons: Extensive deterioration

North Dakota

Non Tactical Area
Stanley Micklesen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130010
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: Asbestos present
Reasons: Contamination

Remote Sprint Launch #4
Stanley Mickelsen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130017
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: Asbestos present
Reasons: Contamination

Remote Sprint Launch #1
Stanley Mickelsen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130018
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: Asbestos present
Reasons: Contamination

Tactical Area of MSR Site
Stanley Mickelsen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130019
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: Asbestos present
Reasons: Contamination

Remote Sprint Launch #3
Stanley Mickelsen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130020
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: Asbestos present
Reasons: Contamination

Remote Sprint Launch #2
Stanley Mickelsen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130021
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: Asbestos present
Reasons: Contamination

Rhode Island

Bldg. 72CC
Naval Station Newport
Newport RI
Landholding Agency: Navy
Property Number: 77201130021
Status: Excess
Reasons: Floodway, Secured Area, Extensive deterioration

Virginia

7 Bldgs.
Marine Corps Base
Quantico VA
Landholding Agency: Navy
Property Number: 77201130023
Status: Excess
Directions: 2600, 2601, 2602, 2633, 2634, 2635, 2636
Reasons: Secured Area, Extensive deterioration

[FR Doc. 2011–25567 Filed 10–6–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5496–N–04]

Notice of a Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Manufactured Housing Consensus Committee (MHCC). The meeting is open to the public and the site is accessible to individuals with disabilities. The Agenda provides an opportunity for citizens to comment on the business before the Committee.

DATES: The meeting will be held on October 18–20, 2011, commencing at 9 a.m. each day.

ADDRESSES: The meeting will be held at The Sheraton Suites Alexandria, 801 North Saint Asaph Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Henry S. Czauski, Acting Deputy Administrator, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9153, Washington, DC 20410, telephone number 202–708–0502 ext. 6477 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2), through implementing regulations at 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3).

Public Comment: Citizens wishing to comment on the business of the Committee are encouraged to register on or before October 14, 2011, by contacting: The National Fire Protection Association, *Attention:* Robert Solomon, by mail to: One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269, or by fax to 617–984–7110, or by e-mail to *mhccaooffice@nfpa.org.* Please prepare written comments to accompany your presentation. The Committee strives to accommodate citizen comment to the extent possible within the time constraints of its meeting Agenda. Advance registration is strongly encouraged. The Committee will also provide an opportunity for public comment on specifically matters before the Committee.

Tentative Agenda: October 18, 2011, 9 a.m. to 5 p.m.; October 19, 2011, 9 a.m. to 5 p.m.; October 20, 2011, 9 a.m. to Noon.

October 18, 2011

9 a.m. Federal Advisory Committee Preliminaries, Review/Approve Minutes of the July, 2011 Meeting.

10:30 a.m. Recess for Subcommittee meetings.

October 19, 2011

9 a.m. to 5 p.m.

October 20, 2011

9 a.m. to noon.
Report from HUD Manufactured Housing Program Office.
Review Log of Proposals.
Subcommittee Reports.
Public Comments (a public comments period will be provided on October 19 and October 20).
Receive/consider Proposals.

October 20, 2011

Adjourn at noon.

Dated: October 4, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–26038 Filed 10–4–11; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5546–D–02]

Order of Succession for the Office of Disaster Management and National Security

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Secretary of HUD designates the Order of Succession for the Office of Disaster Management and National Security. This is the first order of succession established for this office.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Laura L. McClure, Acting Chief Disaster and National Security Officer, Office of Disaster Management and National Security, Department of Housing and Urban Development, 451 7th Street, SW., Room 10170, Washington, DC 20410–6000, telephone number 202–402–6300 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary of HUD is issuing this Order of Succession of officials authorized to perform the functions and duties of the Chief Disaster and National Security Officer, Office of Disaster Management and National Security, when, by reason of absence, disability, or vacancy in office, the Chief Disaster and National Security Officer is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d).

Accordingly, the Secretary of HUD designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Chief Disaster and National Security Officer for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the Chief Disaster and National Security Officer, the following officials within the Office of Disaster Management and National Security are hereby designated to exercise the powers and perform the duties of the office:

(1) Deputy Chief Disaster and National Security Officer.

(2) Preparedness Division Director.

(3) Protective Services Division Director.

(4) Response and Recovery Division Director.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

There are no previous Orders of Succession.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 30, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–26047 Filed 10–6–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N052; 40136–1265–0000–S3]

Savannah National Wildlife Refuge Complex, GA and SC; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Savannah Coastal National Wildlife Refuge Complex (Complex). The Complex consists of the following refuges: Pinckney Island NWR in Beaufort County, South Carolina; Savannah NWR in Chatham and Effingham Counties, Georgia, and Jasper County, South Carolina; Tybee NWR in Jasper County, South Carolina; Wassaw NWR in Chatham County, Georgia; and Blackbeard Island NWR off the coast of McIntosh County, Georgia. In the final CCP, we describe how we will manage these refuges for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Ms. Jane Griess, 694 Beech Hill Lane, Hardeeville, SC 29927. Alternatively, you may download the document from our Internet Site: *http://southeast.fws.gov/planning,* under ''Final Documents.''

FOR FURTHER INFORMATION CONTACT: Ms. Jane Griess, at 843/784–9911 (telephone), 843/784–2465 (fax), or *jane_griess@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for the Complex. The CCP for Wolf Island NWR, which is a part of the Complex, was completed in 2008. We started this process through a **Federal Register** notice on May 19, 2008 (73 FR 28838). Please see that notice for more about the refuges.

We announce our decision and the availability of the final CCP and FONSI for the Complex in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6 (b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA).

Compatibility determinations for beach use, bicycling, commercial guiding for wildlife-wildland observation, environmental education and interpretation, recreational fishing, hiking, public hunting, mosquito control, scientific research, timber harvest, salvage timber harvest and sale, utility rights-of-way, and wildlife observation and photography are available in the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on September 15, 2010 (75 FR 56133). We received comments from State and Federal government agencies, local government agencies, non-governmental organizations, and local citizens.

Selected Alternative

We developed three alternatives for managing the Complex. After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative B for implementation. The primary focus under Alternative B will be to increase management. This alternative best signifies the vision, goals, and purposes of the Complex. We will emphasize restoring and improving resources needed for wildlife and habitat management and providing enhanced appropriate and compatible wildlife-dependent public use opportunities, while addressing key issues and individual mandates.

We will focus on augmenting wildlife and habitat management to identify, conserve, and restore populations of native fish and wildlife species, with an emphasis on migratory birds and threatened and endangered species. This will partially be accomplished by increased monitoring of waterfowl, other migratory and resident birds, and endemic species in order to assess and adapt management strategies and actions. We will address information gaps by the initiation of baseline surveys and periodic monitoring.

Habitat management programs for impoundments, beaches, wetlands, open waters, forested habitats, scrub/shrub habitats, grasslands, and open lands will be re-evaluated and step-down management plans will be developed to meet the foraging, resting, and breeding requirements of priority species. Additionally, monitoring and adaptive habitat management will be implemented to potentially counteract the impacts associated with long-term climate change and sea level rise.

We will more aggressively manage invasive and exotic plant species by implementing a management plan, completing a baseline inventory, supporting research, and controlling by strategic mechanical and chemical means. Additionally, we will utilize this management plan to enhance our efforts to control/remove invasive, exotic, and/or nuisance animals on the refuges.

Alternative B enhances each refuge's visitor service opportunities (except for Tybee NWR, which will remain closed to the public) by: (1) Improving the quality of fishing opportunities; (2) streamlining the quota hunt process and where possible evaluating the options of allowing the use of crossbows and creating additional hunting opportunities; and (3) maintaining and where possible expanding environmental education opportunities. Volunteer programs and a friends group will be expanded to enhance all aspects of management and to increase resource availability. The Complex is also evaluating the possibility of utilizing a concessionaire at Pinckney Island NWR, to implement a tram tour of the refuge that will provide access in a controlled manner and allow participation of patrons with mobility issues.

Under this alternative, the priority of land acquisition at Harris Neck NWR will be to acquire lands that provide resource and public use values. This will be accomplished by acquiring lands from willing sellers by fee title purchase, donation, mitigation purchase and transfer, or other viable means. This will include an investigation into expanding the current acquisition boundary. At Savannah NWR, focus will be increased on acquiring lands that provide resource and public use values. This, too, will be accomplished by acquiring lands from willing sellers.

Law enforcement activities to protect archaeological and historical sites and to provide visitor safety will be intensified. The allocation of an additional law enforcement officer for the Complex will provide security for cultural resources, but will also ensure visitor safety and public compliance with refuge regulations.

Administration plans will stress the need for increased maintenance of existing infrastructure and construction of new facilities. Funding for new construction projects will be balanced between habitat management and public use needs. Additional staff will be required to accomplish the goals of this alternative. Personnel priorities will include employing an environmental education coordinator, law enforcement officers/park rangers, a volunteer coordinator, biological technicians, maintenance workers, refuge managers, assistant refuge managers, and a geographic information systems specialist. The increased Complex budget and staffing levels will better enable us to meet the obligations of wildlife stewardship, habitat management, and public use.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: April 5, 2011.

Mark J. Musaus,

Acting Regional Director.

Editorial Note: This document was received in the Office of the Federal Register on Monday, October 4, 2011.

[FR Doc. 2011–25981 Filed 10–6–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Manzanita Band of Kumeyaay Indians Fee-to-Trust Transfer and Casino Project, Calexico, CA

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA)

as lead agency, with the Manzanita Band of Kumeyaay Indians (a.k.a. Manzanita Band of Digueno Mission Indians) (Tribe), National Indian Gaming Commission (NIGC), and City of Calexico as cooperating agencies, intends to file a Final Environmental Impact Statement (FEIS) with the Environmental Protection Agency (EPA) for the Tribe's proposed 60.8-acre fee-to-trust transfer and casino project located in the City of Calexico, California, and that the FEIS is now available for public review. Public review of the FEIS is part of the administrative process for the evaluation of Tribal applications seeking to have the United States take land into trust for gaming.

DATES: The Record of Decision (ROD) on the proposed action will be issued no sooner than 30 days after the release of the FEIS. Thus, any comments on the FEIS must arrive by November 7, 2011.

ADDRESSES: You may mail or hand carry written comments to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for directions on submitting comments and how to obtain a copy of the FEIS. The FEIS will be available to view at the following locations:

Location	Address	Contact number for general information
Holtville Branch—Meyer Memorial Library	101 E. 6th Street, Holtville, CA 92250	(760) 356–2385
City of Calexico—Camarena Memorial Library	850 Encinas Avenue, Calexico, CA 92231	(760) 768–2170

An electronic version of the FEIS can also be viewed at: *http://www.calexico.ca.gov* (planning division site).

FOR FURTHER INFORMATION CONTACT: John Rydzik, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825, *telephone number:* (916) 978–6051.

SUPPLEMENTARY INFORMATION: Public review of the FEIS is part of the administrative process for the evaluation of Tribal applications seeking to have the United States take land into trust for gaming pursuant to 25 U.S.C. 465, 25 CFR 151, 29 CFR 292 and 25 U.S.C. 2719(b)(1)(B). Pursuant to Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations (40 CFR 1506.10), the publication of this Notice of Availability (NOA) in the **Federal Register** initiates a 30-day waiting period for the Federal decision.

Background

The Tribe proposes that 60.8 acres of land be taken into trust; it subsequently plans to develop a casino facility on this land. The subject property is located at the northern most gateway to the City of Calexico, a California/Mexico border city of growing importance in international trade. The project site is situated at the southwest quadrant of State Highway 111 and Jasper Road and is bounded on the south and west by the Central Main and Dogwood Canals. The 60.8-acre parcel is undeveloped former agricultural land and is located within the City of Calexico's 111 Calexico Place project site, a commercial highway development project that was approved by the City of Calexico City Council on May 5, 2010.

The proposed action consists of the fee-to-trust transfer of the project site, Federal review (by NIGC) of the development and management contract, and development of the proposed project. The proposed project includes a 459,621-square foot casino facility on the 60.8-acre parcel. The casino facility would include an approximately 93,880-square foot casino; 63,000 square feet of food/beverage and retail components; 38,660-square foot entertainment venue; and 218,081 square feet of other operational facilities (*e.g.,* back of house area, central plant). In addition, there will be a 46,000-square foot banquet/meeting hall and 200-room hotel. The casino will have 2,000 slot machines and 45 gaming tables. There will be three guest restaurants and one employee dining room. A swimming pool and 6,000-guest space parking facility will also be developed within the project area.

Project alternatives considered in the FEIS include: (1) Alternative A—Proposed Action; (2) Alternative B—Reduced Casino; (3) Alternative C—No Action Alternative. Alternative A—Proposed Action has been selected as the Preferred Alternative, as discussed in the FEIS. The alternatives are intended to assist the review of the issues presented, but the Preferred Alternative does not necessarily reflect what the final decision will be, because a complete evaluation of the criteria listed 25 CFR part 151 may lead to a final decision that selects an alternative other than the Preferred Alternative, including no action, or that selects a variant of the Preferred or another of the alternatives analyzed in the FEIS.

Environmental issues addressed in the FEIS include land resources; water resources; air quality; biological resources; cultural and paleontological resources; socioeconomic conditions; transportation; land use and agriculture; public services; noise; hazardous materials; visual resources; environmental justice; growth inducing effects, indirect effects; cumulative effects; and mitigation measures.

The BIA has afforded other government agencies and the public extensive opportunity to participate in the preparation of this EIS. The BIA published a notice of intent to prepare the EIS for the proposed action in the **Federal Register** on March 6, 2008 (73 FR 12203). The BIA held a public scoping meeting on March 27, 2008, at the County of Imperial's Board of Supervisors Chamber Room in El Centro, California. An NOA for the Draft EIS (DEIS) was published in the **Federal Register** on October 8, 2010 (75 FR 62417). The DEIS was available for public comment from October 8, 2010 to December 22, 2010. The BIA held a public hearing on the DEIS on November 10, 2010, in the City of Calexico, California.

Directions for Submitting Comments

Please include your name, return address and the caption, ''FEIS Comments, Manzanita Band of Kumeyaay Indians, 60.8–Acre Fee-to-Trust Casino Project, Calexico, California'' on the first page of your written comments. Comments, including names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section of this notice, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Directions To Obtain a Copy of FEIS

To obtain a compact disk copy of the FEIS, please provide your name and address in writing or by voicemail to John Rydzik, Chief of the Division of Environmental, Cultural Resources Management and safety, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the FEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

Authority

This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371, *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 22, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs .

[FR Doc. 2011–25751 Filed 10–6–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0911–8495; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 17, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 24, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Pima County

Marist College Historic District, 72 W. Ochoa St., Tucson, 11000760

LOUISIANA

East Baton Rouge Parish

Virginia Street Historic District, 4512–4642 Virginia & 4338 Florida Sts., Zachary, 11000761

MISSOURI

Jackson County

Milo Apartments, (Working-Class and Middle-Income Apartment Buildings in Kansas City, Missouri MPS), 1014–1020 W. 44th St., Kansas City, 11000763

Pendergast, Thomas J., Headquarters, 1908 Main St., Kansas City, 11000764

Washington County

Washington County Courthouse, 102 N. Missouri St., Potosi, 11000765

NEW HAMPSHIRE

Belknap County

Federal Building, 719 Main St., Laconia, 11000766

NORTH CAROLINA

Beaufort County

North Market Street Historic District, Roughly bounded by 15th, Nicholson & 6th Sts. & Summit Ave., Washington, 11000767

NORTH DAKOTA

Barnes County

Green Consolidated School, 39 R St., SE., Valley City, 11000768

OREGON

Linn County

Andrus, Jerry, House, 1638 1st Ave E., Albany, 11000769

Multnomah County

Portland Public Service Building, 1120 SW. 5th Ave., Portland, 11000770

Springdale School, 32405 E. Historic Columbia R. Hwy., Corbett, 11000771

WYOMING

Johnson County

Blue Gables Motel, (Motor Courts and Motels in Wyoming MPS), 662 N. Main St., Buffalo, 11000772

In the interest of preservation, the comment period for the following resource has been shortened to three (3) days:

MISSISSIPPI

Harrison County

Gulfport Harbor Square Commercial Historic District, Roughly between 23rd & 28th Aves., 13th St. & 25th Ave. to jct. with 17th St., Gulfport, 11000762

Request for REMOVAL has been received for the following resource:

MISSISSIPPI

Harrison County

Harbor Square Historic District, Roughly bounded by L & N Railroad, 23rd Ave., 13th St. and 27th Ave., Gulfport, 85001788

[FR Doc. 2011–25968 Filed 10–6–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Final Environmental Impact Report/Environmental Impact Statement for Upper Truckee River Restoration and Golf Course Reconfiguration Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The final Environmental Impact Report/Environmental Impact Statement for the Upper Truckee River Restoration and Golf Course Reconfiguration Project is available for public review and comment. The Bureau of Reclamation, the California Department of Parks and Recreation, and the Tahoe Regional Planning Agency have evaluated comments and are recommending a preferred alternative for approval. The preferred alternative includes river ecosystem restoration with a reconfigured 18-hole golf course.

DATES: Reclamation will complete a Record of Decision at least 30 days from publication of the final Environmental Impact Report/Environmental Impact Statement.

ADDRESSES: The final Environmental Impact Report/Environmental Impact Statement is accessible at the following Web sites:

- *http://www.restoreuppertruckee.net/index.htm.*
- *http://www.parks.ca.gov/?page_id=981* (*click on El Dorado County*).

• *http://www.trpa.org.*

• *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=5760.*

The final Environmental Impact Report/Environmental Impact Statement is available for review by the public during normal business hours at the following locations:

• California State Parks' Administrative office at Sugarpine Point State Park, 7360 West Lake Boulevard, Tahoma, CA 96142.

• Tahoe Regional Planning Agency front desk, 128 Market Street, Stateline, NV 89449.

• Mid-Pacific Regional Library, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825.

• South Lake Tahoe Library front desk, 1000 Rufus Allen Boulevard, South Lake Tahoe, CA 96150.

Hard copies can be printed for purchase at Staples, 2061 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150. CDs are also available upon request by e-mail from California State Parks at: *utproject@parks.ca.gov.*

FOR FURTHER INFORMATION CONTACT: Cyndie Walck, California State Parks, 530–581–0925; Brian Judge, TRPA, 775–589–5262; or Myrnie Mayville, Reclamation, 775–589–5240.

SUPPLEMENTARY INFORMATION: The purposes of this project are:

• To improve geomorphic processes, ecological functions, and habitat values of the Upper Truckee River within the study area;

• To reduce the river's discharge of nutrients and sediment that diminish Lake Tahoe's clarity; and

• To provide access to public recreation opportunities in Washoe Meadows State Park and Lake Valley State Recreation Area.

The 520-acre study area is just north of Meyers and south of the City of South Lake Tahoe, within El Dorado County, California. It includes the southern portion of Washoe Meadows State Park, Lake Valley State Recreation Area, and small portions of U.S. Forest Service and California Tahoe Conservancy lands, as well as a 2.24-mile reach of the Upper Truckee River.

The project partners (the Bureau of Reclamation, the California Department of Parks and Recreation, and the Tahoe Regional Planning Agency) worked with a team of technical consultants to develop five alternatives for the reconfiguration project. These alternatives are the product of extensive review of comments on the notice of preparation and notice of intent, as well as comments provided at public scoping meetings and a recreation planning workshop conducted for additional public input. The project partners presented the five alternatives for public review during circulation of the draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS). The draft EIR/EIS includes detailed analysis of a reasonable range of alternatives, including a no-action alternative. (Other alternatives proved to be unsuitable for detailed study.)

The five alternatives include four action alternatives (alternatives 2–5), and the no-project/no-action alternative (alternative 1). For alternative 1, the river restoration and changes to the golf course would not be implemented. This alternative represents a projection of reasonably foreseeable future conditions that could occur if no project actions were implemented.

Alternative 2 would involve restoration of the Upper Truckee River with a reconfigured 18-hole regulation golf course. Alternative 3 would involve similar river restoration, but providing only a reduced-play (9-hole or executive) golf course. Alternative 4 would use a combination of hard and soft stabilization to keep the river in its present configuration and includes only minor changes to the existing 18-hole regulation golf course. Alternative 5 would involve decommissioning and removing the 18-hole regulation golf course to restore all or a portion of the golf course landscape to meadow and riparian habitat.

To select the preferred alternative, the project partners screened the five alternatives using two types of criteria:

• Criteria related to the project purpose, need, and goals, and objectives; and

• Criteria related to geomorphology, ecology, water quality, recreation, operations, engineering, and revenue.

The preferred alternative is a slightly modified version of alternative 2 with river restoration and an 18-hole regulation golf course. The quarry restoration was removed after further assessment because California State Parks found that the area was recovering on its own and restoration was not needed. There have been some slight modifications to the trail layout in the golf course area. Acreages have changed due to acreage errors in the draft EIR/EIS as well as to bring part of the sewer access road into the State Recreation Area, and to allow for some potential minor modifications in the final golf course layout. The final EIR/EIS contains a complete description of the preferred alternative.

A notice of availability announcing the release of the draft EIR/EIS was published in the **Federal Register** on August 25, 2010 (75 FR 52360). The written comment period on the draft EIR/EIS ended November 4, 2010. The final EIR/EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

Notice of the final EIR/EIS is being distributed to interested agencies, stakeholder organizations, and individuals. The next steps in the process are as follows:

• About one week after the release of the final EIR/EIS, the Environmental Protection Agency will include the EIR/EIS on the weekly list published in the **Federal Register.**

• 30 days or more after the Environmental Protection Agency publishes the list, Reclamation will complete a Record of Decision. The Record of Decision will state the action that will be implemented and will discuss all factors leading to the decision.

• In late fall 2011, the California Parks and Recreation Commission will consider the General Plan amendment.

• Sometime after the California Commission's decision, the Tahoe Regional Planning Agency Governing Board will consider approval.

Dates for the Park Commission and Planning Agency meetings will be posted on the following California State Parks Web site: *http://www.restoreuppertruckee.net.*

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence—including your personal identifying information—may be made publicly available at any time. While you may ask us in your correspondence to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 15, 2011.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2011–25845 Filed 10–6–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–027]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission,

TIME AND DATE: October 12, 2011 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1091 (Review) (Artists' Canvas from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before October 25, 2011.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 4, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–26100 Filed 10–5–11; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Understanding Trends in Hate Crimes Against Immigrants and Hispanic Americans

ACTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), National Institute of Justice (NIJ) and Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 148, page 46326, on August 2, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 7, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Carrie Mulford, National Institute of Justice, 810 7th Street, NW., Washington, DC 20531. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Understanding Trends in Hate Crimes Against Immigrants and Hispanic Americans.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ?. National Institute of Justice, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement chiefs and sheriffs. Secondary: Patrol officers, directors of advocacy organizations for immigrants, and clients of immigration advocacy organizations. While there has been great progress in understanding and measuring hate crime, many fundamental questions remain unanswered. To address these questions, we are employing a multi-method analysis of hate crime in the United States with a special focus on trends in crimes against Hispanic Americans and others perceived to be immigrants. The first phase of the project, already complete, involved gathering and analyzing relevant secondary data sets. Phase two of the project will involve a survey of a sample of 500 police departments, focus groups with law enforcement personnel and NGOs addressing hate crime in five selected sites, and interviews with expert law enforcement practitioners, trainers and researchers.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: We hope to gather 500 responses to the law enforcement survey. Agencies selected for the survey will be based on a disproportionate stratified random sample design with oversampling of agencies serving populations over 50,000. Further, we estimate that we will conduct about 20 focus groups, with about eight individuals each, and at least 60 individual interviews. The table below shows the estimated number of respondents for each portion of data collection.

State	Arizona	California	Michigan	New Jersey	Texas
Law Enforcement Survey					
Police Chiefs	64	174	79	82	101

State	Arizona	California	Michigan	New Jersey	Texas
Focus Groups					
Patrol Officers	16	16	16	16	16
Clients of NGOs	16	16	16	16	16
One-on-One Interviews					
Law Enforcement	6	6	6	6	6
NGO directors	6	6	6	6	6

The law enforcement survey will take about 30 minutes to complete. Each of the focus groups will last for approximately one hour. Individual interviews will last between 30 minutes and one hour.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 470 annual total public burden hours associated with this collection.

Task	Estimated time (minutes)	Total participants	Total minutes per task
Law Enforcement Survey	30	500	15,000
Focus Groups	60	160	9,600
Interviews	60	60	3,600
Total			28,200 (=470 hours)

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–25987 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0052]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Extension of a Currently Approved Information Collection; Claims Filed Under the Radiation Exposure Compensation Act (RECA)

ACTION: 30-Day Notice of Information Collection under Review.

The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 148, page 46324 on August 2, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment November 7, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Dianne Spellberg at 202–616–4129 or the DOJ Desk Officer at 202–395–3176.

OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Claims Filed Under the Radiation Exposure Compensation Act (RECA).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number:* N/A. The Civil Division, United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Abstract:* Information is collected to determine whether an individual is entitled to compensation under the Radiation Exposure Compensation Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: It is estimated that 2,000 respondents will complete the form annually within approximately 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,000 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–25988 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 4, 2011, a proposed Settlement Agreement in the bankruptcy matter *In re DPH Holdings Corp., et al.,* Jointly Administered Case No. 05–44481 (RDD), was filed with the United States Bankruptcy Court for the Southern District of New York. The Settlement Agreement between the United States and DPH Holdings Corp., f/k/a Delphi Corp., and its affiliated reorganized debtors (''Reorganized Debtors'') resolves claims and causes of action of the United States on behalf of the Environmental Protection Agency (''EPA'') against debtor Delphi Automotive Systems LLC n/k/a DPH–DAS LLC under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C 9601–75 (''CERCLA''), and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973, with respect to the Tremont City Landfill Superfund Site in Tremont City, Ohio (''Tremont Site''), and the South Dayton Dump & Landfill Superfund Site in Moraine, Ohio (''South Dayton Site'').

Under the Settlement Agreement, the United States, on behalf of EPA, will have an allowed claim of $857,582.52. The allowed claim shall be allocated as an allowed claim of $559,292.95 for the Tremont Site and an allowed claim of $298,289.57 for the South Dayton Site. The effectiveness of the settlement is subject to the approval of a potential settlement of a tax refund action, *Delphi Corp., et al.* v. *United States,* Case No. 08 Civ. 4487 (PKC) (the ''Tax Refund Action''), pending in the United States District Court for the Southern District of New York. If the Tax Refund Action settlement is approved, the allowed claim of $857,582.52 shall be applied as a setoff against the refund that would be owed to the Reorganized Debtors. Pursuant to the Settlement Agreement, the Debtors and Reorganized Debtors will receive a covenant not to sue from the United States on behalf of EPA for the sites identified in this Notice, i.e., the Tremont Site and South Dayton Site.

Comments relating to the Settlement Agreement must be received by the Department of Justice no later than fourteen (14) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *In re DPH Holdings Corp.,* D.J. Ref. _90–11–3–08913. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreement may be examined at the Office of the United States Attorney, 86 Chambers Street, 3rd Floor, New York, New York 10007, and at the U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–26037 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on August 11, 2011, Fisher Clinical Services, Inc., 7554 Schantz Road, Allentown, Pennsylvania 18106, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Noroxymorphone (9668)	II
Sufentanil (9740)	II
Tapentadol (9780)	II

The company plans to import the listed substances for analytical research and clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than November 7, 2011.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted

in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: September 27, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–25989 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2011, and published in the **Federal Register** on June 16, 2011, 76 FR 35241, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methamphetamine (1105)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate. With regard to all non-Narcotic Raw Material drugs on this application no comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Chattem Chemicals, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control,

Drug Enforcement Administration.

[FR Doc. 2011–26066 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on July 19, 2011, Cody Laboratories Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414–9321, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers. The company is registered with DEA as a manufacturer of several controlled substances that are manufactured from raw opium, poppy straw, and concentrate of poppy straw.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26068 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 13, 2011, and published in the **Federal Register** on May 27, 2011, 76 FR 30969, Akorn, Inc., 1222 W. Grand Avenue, Decatur, Illinois 62522, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in schedule II.

The company plans to import Remifentanil in bulk for use in dosage-form manufacturing.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Akorn, Inc., to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Akorn Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–25992 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2011, and published in the **Federal Register** on June 16, 2011, 76 FR 35240, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Fenethylline (1503)	I
Methaqualone (2565)	I
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Benzylpiperazine (7493)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Tilidine (9750)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Lipomed, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Lipomed, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26044 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2011, and published in the **Federal Register** on June 16, 2011, 76 FR 35241, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco Inc. to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26062 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Registration

By Notice dated June 7, 2011, and published in the **Federal Register** on June 16, 2011, 76 FR 35239, Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to bulk manufacture amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc. to import the basic class of controlled

substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Boehringer Ingelheim, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26032 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 8, 2011, National Center for Natural Products Research—NIDA Project, University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to cultivate marihuana for the National Institute on Drug Abuse for research approved by the Department of Health and Human Services.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 6, 2011.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–25990 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 4, 2011, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (GHB) (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
4-anilino-N-phenethyl-4-piperidine (ANPP) (8333).	II
Phenylacetone (8501)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Dextropropoxyphene, bulk II (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Raw Opium (9600)	II
Oxymorphone (9652)	II
Concentrate of Poppy Straw (9670).	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company will manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 6, 2011.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26005 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 9, 2011, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Diphenoxylate (9170), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance for sale in bulk to its customers for formulation into finished pharmaceuticals.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 6, 2011.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26063 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 18, 2011, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of

the following basic classes of controlled substances:

Drug	Schedule
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II

The company plans to manufacture the listed controlled substance Noroxymorphone (9668), in bulk for sale to its customers. It plans to manufacture the other two listed controlled substances in bulk for dosage form development, clinical trials, and use in stability qualification studies.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 6, 2011.

Dated: September 27, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26057 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 16, 2011, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Tapentadol (9780)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 6, 2011.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control. Drug Enforcement Administration.

[FR Doc. 2011–26055 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 28, 2011, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture a radioactive product to diagnose Parkinson's disease; and to manufacture a bulk investigational new drug (IND) for clinical trials.

Any other such applicant, and any person who is presently registered with DEA to manufacture such a substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than December 6, 2011.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26030 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 29, 2011, Cody Laboratories, 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans on manufacturing the listed controlled substances in bulk for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion

Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 6, 2011.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26003 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 25, 2011, and published in the **Federal Register** on June 1, 2011, 76 FR 31638, Wildlife Laboratories Inc., 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Carfentanil (9743), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the above listed controlled substance for sale to veterinary pharmacies, zoos, and for other animal and wildlife applications.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Wildlife Laboratories Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Wildlife Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: September 29, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–25996 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration

By Notice dated June 7, 2011, and published in the **Federal Register** on June 16, 2011, 76 FR 35242, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Penick Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 28, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–26031 Filed 10–6–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,095]

Avon Products, Inc., Including On-Site Leased Workers From Spherion/Source Right, Springdale, 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 April 8, 2010, applicable to workers of Avon Products, Inc., Springdale, Ohio. The workers produce cosmetics, in particular pump spray items, liquid and roll-on items, and lipstick and hot fill items. The notice was published in the **Federal Register** on May 5, 2010 (75 FR 24750).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Spherion/Source Right were employed on-site at the Springdale, Ohio location of Avon Products. The Department has determined that these workers were sufficiently under the control of Avon Products, Springdale, Ohio to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Spherion/Source Right working on-site at the Springdale, Ohio location of Avon Products.

The amended notice applicable to TA–W–73,095 is hereby issued as follows:

''All workers of Avon Products, Inc., including on-site leased workers from Spherion/Source Right, Springdale, Ohio, who became totally or partially separated from employment on or after December 13, 2008, through April 8, 2012, 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 at Washington, DC, this 28th day of September 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–26036 Filed 10–6–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,095]

Avon Products, Inc. Including On-Site Leased Workers From Spherion/Source Right, Springdale, OH; 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 April 8, 2010, applicable to workers of Avon Products, Inc., Springdale, Ohio. The workers produce cosmetics, in particular pump spray items, liquid and roll-on items, and lipstick and hot fill items. The notice was published in the **Federal Register** on May 5, 2010 (75 FR 24750).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Spherion/Source Right were employed on-site at the Springdale, Ohio location of Avon Products. The Department has determined that these workers were sufficiently under the control of Avon Products, Springdale, Ohio to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Spherion/Source Right working on-site at the Springdale, Ohio location of Avon Products.

The amended notice applicable to TA–W–73,095 is hereby issued as follows:

All workers of Avon Products, Inc., including on-site leased workers from Spherion/Source Right, Springdale, Ohio, who became totally or partially separated from employment on or after December 13, 2008, through April 8, 2012, 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 at Washington, DC this 28th day of September 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–26011 Filed 10–6–11; 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 and Alternative Trade 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 (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *September 19, 2011 through September 23, 2011.*

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. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected 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(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact

date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–80,397; Finish Line Hosiery, Inc., Fort Payne, AL: July 17, 2011.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,173; Hoquiam Plywood Co., Inc., Hoquiam, WA: May 9, 2010.

TA–W–80,253; Carestream Health, Inc., Windsor, CO: September 12, 2010.

TA–W–80,253A; Adecco Employment Services, Windsor, CO: June 22, 2010.

TA–W–80,382; Westwood Aluminum Castings, Inc., Waukesha, WI: August 20, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,417; F&F Metal Products, Inc., Greenville, TX: September 6, 2010.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–80,397; Finish Line Hosiery, Inc., Fort Payne, AL.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade 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.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–80,325; UTC Corporation, Syracuse, NY.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,209; Med Tec Ambulance Corp., White Pigeon, MI.

TA–W–80,246; Border Apparel, Inc, El Paso, TX.

TA–W–80,354; Avery Dennison, Greensboro, NC.

TA–W–80,408; International Business Machines (IBM), Southbury, CT.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–80,175; Verizon Communications, Tampa, FL.

TA–W–80,200; Accentia Physicians Services, Lauderhill, FL.

TA–W–80,301; Capgemini America, Inc., Lee's Summit, MO.

TA–W–80,305; General Advertising Products, Cincinnati, OH.

TA–W–80,374; Stream Global Services, Inc., Beaverton, OR.

TA–W–80,389; Citicorp Credit Services, Inc., (USA)(CCSI), Florence, KY.

TA–W–80,404; Golden Living, Fort Smith, AR.

TA–W–80,423; Allstate Insurance Company, Northbrook, IL.

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 petitioner has requested that the petition be withdrawn.

TA–W–80,357; Sykes, Chavies, KY.

I hereby certify that the aforementioned determinations were issued during the period of *September 19, 2011 through September 23, 2011*. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov*. These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: September 30, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–26010 Filed 10–6–11; 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 and Alternative Trade 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 (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *September 19, 2011 through September 23, 2011.*

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. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected 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(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–80,397; Finish Line Hosiery, Inc., Fort Payne, AL: July 17, 2011.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,173; Hoquiam Plywood Co., Inc., Hoquiam, WA: May 9, 2010.

TA–W–80,253; Carestream Health, Inc., Windsor, CO: September 12, 2010.

TA–W–80,253A; Adecco Employment Services, Windsor, CO: June 22, 2010.

TA–W–80,382; Westwood Aluminum Castings, Inc., Waukesha, WI: August 20, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,417; F&F Metal Products, Inc., Greenville, TX: September 6, 2010.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–80,397; Finish Line Hosiery, Inc., Fort Payne, AL.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade 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.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–80,325; UTC Corporation, Syracuse, NY.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,209; Med Tec Ambulance Corp., White Pigeon, MI.

TA–W–80,246; Border Apparel, Inc, El Paso, TX.

TA–W–80,354; Avery Dennison, Greensboro, NC.

TA–W–80,408; International Business Machines (IBM), Southbury, CT.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–80,175; Verizon Communications, Tampa, FL.

TA–W–80,200; Accentia Physicians Services, Lauderhill, FL.

TA–W–80,301; Capgemini America, Inc., Lee's Summit, MO.

TA–W–80,305; General Advertising Products, Cincinnati, OH.

TA–W–80,374; Stream Global Services, Inc., Beaverton, OR.

TA–W–80,389; Citicorp Credit Services, Inc., (USA)(CCSI), Florence, KY.

TA–W–80,404; Golden Living, Fort Smith, AR.

TA–W–80,423; Allstate Insurance Company, Northbrook, IL.

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 petitioner has requested that the petition be withdrawn.

TA–W–80,357; Sykes, Chavies, KY.

I hereby certify that the aforementioned determinations were issued during the period

of *September 19, 2011 through September 23, 2011.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: September 30, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–26035 Filed 10–6–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[Funding Opportunity Number: SGA/DFA PY 10–13]

Announcement of Updated Funding Availability for H–1B Technical Skills Training Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Additional Funding.

SUMMARY: On May 3, 2011, the Employment and Training Administration (ETA) published a notice in the **Federal Register** announcing the availability of $240 million for the H–1B Technical Skills Training Grants to be awarded through a competitive process in SGA/DFA PY 10–13. Through this notice, ETA clarifies existing language in Section II.A of the Solicitation for Grant Application (SGA).

SUPPLEMENTARY INFORMATION:

Clarification: The Department of Labor is interested in clarifying the amount of grant funding available and encouraging additional applicants to apply for the H–1B Technical Skills Training Grants competition that will close on November 17, 2011. The original SGA indicated $240 million in grant funds available; however, because of additional H–1B fees collected, ETA is likely to award additional grants in Round 2 to quality competitive applicants that provide On-the-Job Training (OJT) as the primary or only training strategy to every participant. The current estimate of additional funds reserved for OJT will be approximately $100 million.

Relevant SGA Language, Section II.A., Award Amount, p. 5 states, ''DOL anticipates that additional funding will accrue for this grant training program between the first and second rounds of grants contained in this Solicitation. Such additional funding may be made available for awards during the second round of funding, depending on the quality of applications received. Grant awards will be made only to the extent that funds are available.''

The complete SGA is available in detail on ETA's Web site at *http://www.doleta.gov/grants/find_grants.cfm* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Jeannette Flowers, Division of Workforce System Federal Assistance, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Telephone: (202) 693–3322 (this is not a toll-free number). E-mail: *flowers.jennette@dol.gov.*

Laura Patton Watson,

Grant Officer, Employment and Training Administration.

[FR Doc. 2011–26185 Filed 10–5–11; 4:15 pm]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–088)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Friday, October 21, 2011, 12:30 to 2 p.m. Central Standard Time.

ADDRESSES: NASA Johnson Space Center, NASA Parkway, Building 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Burch, Aerospace Safety Advisory Panel Administrative Officer, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0550.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its Fourth Quarterly Meeting for 2011. This meeting is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight.

The agenda will include NASA Johnson Space Center safety program overview, commercial crew update, and updates on NASA responses to ASAP recommendations. The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. Attendees will be required to sign a visitor's register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign Nationals attending the meeting will be required to provide the following information no less than 7 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); and title/position of attendee. Additional information may be requested. This would also include Legal Permanent Resident information: Green card number and expiration date. To expedite admittance, attendees with U.S. citizenship can provide identifying information 2 working days in advance. Persons with disabilities who require assistance should indicate this. Photographs will only be permitted during the first 10 minutes of the meeting.

During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA and should be received 2 working days in advance. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. To reserve a seat, file a written statement, or make a verbal presentation, please contact Ms. Susan Burch via e-mail at *susan.burch@nasa.gov.*

Dated: October 3, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–25911 Filed 10–6–11; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11–089]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, October 27, 2011, 2 p.m. to 4 p.m., Local Time.

ADDRESSES: This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–469–0977, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number 995 834 484, and password PSS@Oct27.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Status of Fiscal Year 2012 Budget and Impacts.

—Status of the Potential Joint Program/Missions with the European Space Agency.

—Update on the NASA Response to the National Research Council Planetary Decadal Survey

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: October 3, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–26033 Filed 10–6–11; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until November 7, 2011.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer:

Clearance Officer: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861. *E-mail: OCIOmail@ncua.gov.*

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0138.

Type of Review: Reinstatement, with change, of a previously approved collection.

Title: Community Development Revolving Loan Fund—Loan Program.

Description: NCUA requests this information from participants in the Community Development Revolving Loan Fund (CDRLF) Loan Program. The information will allow NCUA to assess a credit union's capacity to repay the funds and ensure that the funds were used as intended to benefit the institution and community it serves.

Estimated No. of Respondents/Recordkeepers: 75.

Estimated Burden Hours per Response: 4, 8, 16 or 40 hours per response, dependent on application type.

Frequency of Response: Reporting, on occasion and semi-annually.

Estimated Total Annual Burden Hours: 1,100 hours.

Estimated Total Annual Cost: $38,500.

By the National Credit Union Administration Board on October 3, 2011.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2011–26064 Filed 10–6–11; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until November 7, 2011.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Contact or OMB Reviewer listed below:

NCUA Contact: Tracy Sumpter, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861. *E-mail: OCIOMail@ncua.gov.*

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0004.

Form Number: NCUA 5300.

Type of Review: Revision to the currently approved collection.

Title: Quarterly Call Report.

Description: The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Respondents: All Credit Unions.

Estimated No. of Respondents/Recordkeepers: 7,264.

Estimated Burden Hours per Response: 6.6 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 191,770.

Estimated Total Annual Cost: $5,628,450.

By the National Credit Union Administration Board on October 3, 2011.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2011–26060 Filed 10–6–11; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meeting

The National Science Board's Subcommittee on Facilities, pursuant to NSF regulations (45 CFR 614), The National Science Foundation Act (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Wednesday October 12, 2011 at 2–3 p.m., EDT.

SUBJECT MATTER: Chairman's remarks, approval of minutes of prior meetings, discussion of Mid-Scale Instrumentation Report.

STATUS: Open.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A room will be available for the public and NSF staff to listen-in on this teleconference meeting. All visitors must contact the Board Office at least *one day* prior to the meeting to arrange for a visitor's badge and obtain the room number. Call 703–292–7000 to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive their visitor's badge on the day of the teleconference.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Jennie Moehlmann, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–26189 Filed 10–5–11; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443–LR; ASLBP No. 10–906–02–LR–BD01]

Atomic Safety and Licensing Board; Nextera Energy Seabrook, LLC (Seabrook Station, Unit 1); Notice of Hearing

Before Administrative Judges: Paul S. Ryerson, Chairman; Dr. Michael F. Kennedy, Dr. Richard E. Wardwell.

This proceeding concerns the application filed by NextEra Energy Seabrook, LLC to extend its operating license for Seabrook Station, Unit 1 for an additional twenty years. In a February 15, 2011 memorandum and order, the Board ruled that each of the five petitioning organizations (now Intervenors) has standing to intervene in this proceeding and admitted four of the contentions proffered by the Intervenors, in whole or in part.[1]

Accordingly, the Board will conduct an evidentiary hearing concerning the admitted contentions, as limited by the Board's February 15, 2011 order.[2] The specific time, date and location of the evidentiary hearing will be announced in a subsequent notice or order.

It is so *ordered.*

For the Atomic Safety and Licensing Board.

Dated in Rockville, Maryland, on October 3, 2011.

Paul S. Ryerson,

Chairman, Administrative Judge.

[FR Doc. 2011–26052 Filed 10–6–11; 8:45 am]

BILLING CODE 7590–01–P

[1] LBP–11–02, 73 NRC __,__ (slip op. at 1–2) (Feb. 15, 2011).

[2] *Id.* at 63.

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0093; Docket No. 50–438]

Tennessee Valley Authority (Bellefonte Nuclear Plant, Unit 1)

Order

I.

The Tennessee Valley Authority (TVA, or the applicant) is the current holder of Construction Permit (CP) Nos. CPPR–122 and CPPR–123, which were issued by the Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) on December 24, 1974 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090680334) for construction of the Bellefonte Nuclear Plant (BLN), Units 1 and 2, respectively. The CPs for CPPR–122 and CPPR–123 expire on October 1, 2011, and October 1, 2014, respectively.

These facilities, currently in deferred plant status as described in the Commission Policy Statement on Deferred Plants, published in the **Federal Register** on October 14, 1987 (52 FR 38077), are at the applicant's site in Jackson County, AL, located on a peninsula at Tennessee River Mile 392 on the west shore of Guntersville Reservoir, about 6 miles east-northeast of Scottsboro, AL.

TVA filed a request on October 8, 2010 (ADAMS Accession No. ML102870233), as supplemented April 25 and September 1, 2011 (ADAMS Accession Nos. ML11124A170 and ML11249A162, respectively), under Title 10 of the Code of Federal Regulations (10 CFR) 50.55(b) for the extension of the latest date for completion of construction as stated in CPPR–122 for BLN, Unit 1, to October 1, 2020.

In its letter dated October 8, 2010, TVA stated that extending the BLN Unit 1 CP would allow it to either complete construction or continue to preserve and maintain BLN Unit 1 in a deferred status as a valuable asset pending a longer term determination of generation needs to meet future electrical demand. TVA stated that the requested extension includes a reasonable amount of time to allow for adjustments to the schedule as may become necessary. TVA also informed the NRC that its decision on the eventual construction and completion of BLN Unit 1 would be pending completion of TVA's integrated resource planning (IRP) process in spring 2011.

By letter dated August 30, 2010 (ADAMS Accession No. ML102440618), TVA informed the NRC that it was

funding for initial engineering, design, procurement of long lead components, and regulatory basis development. By providing the funding of this work, TVA would maintain the option for future power generation at BLN Unit 1.

In the letter dated April 25, 2011, TVA informed the NRC of the TVA Board of Directors' decision on April 14, 2011, to accept the results of the TVA IRP. TVA stated that nuclear expansion was present in the majority of the electrical generation portfolios considered in the IRP and that the majority of portfolios identified BLN Unit 1 as the potential generation resource. Thus, the completion and commercial operation of BLN Unit 1 is consistent with and supports the TVA IRP's planning direction to, among other actions, add nuclear generation capacity in the 2018–2020 timeframe.

In the letter dated September 1, 2011, TVA informed the NRC of its decision to complete construction and of the eventual commercial operation of BLN Unit 1. TVA stated that the details and basis for its decision appear in the record of decision on the ''Final Supplemental Environmental Impact Statement, Single Nuclear Unit at the Bellefonte Plant Site, Jackson County, Alabama,'' as published in the **Federal Register** on August 30, 2011 (76 FR 53994). TVA said that the final supplemental environmental impact statement identifies its preferred alternative as the completion and operation of BLN Unit 1. TVA informed the NRC that it would resume construction activities associated with BLN Unit 1, only after the initial loading of fuel at Watts Bar Nuclear Plant, Unit 2.

II.

The NRC reviewed the request dated October 8, 2010, and supplemental information provided, and finds that there is reasonable assurance that the health and safety of the public will not be endangered by extension of the construction completion date, and that the requested period of time is reasonable. In addition, good cause exists for extending the completion date to October 1, 2020.

The NRC staff prepared an environmental assessment and finding of no significant impact and published it in the **Federal Register** on September 19, 2011 (76 FR 58050). Under 10 CFR 51.32, ''Finding of No Significant Impact,'' the Commission has determined that extending the construction completion date will have no significant impact on the environment.

For further details on the proposed action, see the applicant's letters dated October 8, 2010, April 25, 2011, and September 1, 2011, and the NRC staff's letter and safety evaluation of the requested extension dated September 30, 2011. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR.resource@nrc.gov*.

Within 60 days after the date of issuance of this Order, any person whose interest may be affected may request a hearing in accordance with 10 CFR 2.309. The scope of this Order extending the construction completion date and any proceeding hereunder is limited to direct challenges to the CP holder's asserted reasons that show good cause justification for the extension. Requests for a hearing must be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room online in the NRC library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov*. If a request for a hearing is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a request for hearing shall set forth with particularity the interest of the requestor in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered. The request must specifically explain: (1) The nature of the requestor's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's interest. The petition must also set forth the specific contentions which the requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor shall provide a brief explanation of the basis for each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor intends to rely in proving the contention at the hearing. The requestor must also provide references to those specific sources and documents of which the requestor is aware and on which the requestor intends to rely to establish those facts or expert opinion. The requestor must provide sufficient information to show that a genuine dispute exists with the CP holder on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor to relief. A requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors seek to co-sponsor a contention or propose substantially the same contention, the requestors will be required to jointly designate a representative who shall have the authority to act for the requestors with respect to that contention.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, any motion or other document filed in the proceeding prior to the submission of a request for hearing, 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 associated with E-Filing, the requestor should contact, at least 10 days prior to the filing deadline, the Office of the Secretary by e-mail at *Hearing.Docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) A digital identification certificate that allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital identification 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 identification 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 (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital identification certificate and a docket has been created, the participant can then submit a request for hearing. Submissions should be in portable document format (pdf) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, the CP holder and other participants (or their counsel or representative) must apply for and receive a digital identification certificate before a hearing request 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 by clicking on the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available Monday through Friday between 8 a.m. and 8 p.m. eastern time, 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. The NRC considers a filing complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon the deposit of 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. The NRC asks participants 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. The NRC asks participants not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

Copies of the application to extend the completion date in the CP for BLN Unit 1 are available for public inspection at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Room O1–F21, Rockville, Maryland 20852–2738. The application may be accessed in ADAMS through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/readingrm/adams.html* under ADAMS Accession Number ML102870233.

As stated above, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC's Public Document Room (PDR) reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

Attorney for the permit holder: Maureen H. Dunn, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902.

III.

It is hereby ordered that the latest construction completion date for CP No. CPPR–122 is extended to October 1, 2020.

Dated at Rockville, Maryland, this 30th day of September 2011.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–26059 Filed 10–6–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–98; Order No. 891]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the La Grande, Washington post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 13, 2011; *deadline for notices to intervene:* October 25, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 28, 2011, the Commission received a petition for review of the Postal Service's determination to close the La Grande post office in La Grande, Washington. The petition for review was filed by David and Judi Smith (Petitioners) and is postmarked September 19, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–98 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 2, 2011.

Issues apparently raised. Petitioners contend that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 13, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 13, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 13, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 28, 2011	Filing of Appeal.
October 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.

PROCEDURAL SCHEDULE—Continued

October 13, 2011	Deadline for the Postal Service to file any responsive pleading.
October 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 2, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 22, 2011 ..	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 7, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 14, 2011 ..	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 17, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25993 Filed 10–6–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–97; Order No. 890]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Oak Hill, Alabama post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 13, 2011; *deadline for notices to intervene:* October 25, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 28, 2011, the Commission received a petition for review of the Postal Service's determination to close the Oak Hill post office in Oak Hill, Alabama. The petition for review was filed by the Patrons of Oak Hill (Petitioner) and is postmarked September 19, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–97 to consider Petitioner's appeal. If Petitioner would like to further explain their position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 2, 2011.

Issue apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 13, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 13, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 13, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James F. Callow is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 28, 2011	Filing of Appeal.
October 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 13, 2011	Deadline for the Postal Service to file any responsive pleading.
October 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 2, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 22, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 7, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 14, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 17, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25944 Filed 10–6–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–96; Order No. 889]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the West Leyden, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 13, 2011; *deadline for notices to intervene:* October 14, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 28, 2011, the Commission received a petition for review and application for suspension of the Postal Service's determination to close the West Leyden post office in West Leyden, New York. The petition for review was filed by the Town of Lewis Board/Village of West Leyden (Petitioner) and is postmarked September 21, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–96 to consider Petitioner's appeal. If Petitioner would like to further explain their position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 2, 2011.

Issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 13, 2011.

Application for Suspension of Determination. In addition to their Petition, the Town of Lewis Board/Village of West Leyden requests an application for suspension of the Postal Service's determination (*see* 39 CFR 3001.114). Commission rules allow for the Postal Service to file an answer to such application within 10 days after the application is filed. The Postal Service shall file an answer to the application no later than October 11, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy

rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file an answer to the application for suspension of the Postal Service's determination no later than October 11, 2011.

2. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 13, 2011.

3. Any responsive pleading by the Postal Service to this notice is due no later than October 13, 2011.

4. The procedural schedule listed below is hereby adopted.

5. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated officer of the Commission (Public Representative) to represent the interests of the general public.

6. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 28, 2011	Filing of Appeal.
October 11, 2011	Deadline for the Postal Service to file an answer responding to an application for suspension.
October 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 13, 2011	Deadline for the Postal Service to file any responsive pleading.
October 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 2, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 22, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 7, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 14, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 19, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25942 Filed 10–6–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–95; Order No. 888]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Carolina, West Virginia post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 13, 2011; *deadline for notices to intervene:* October 25, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 28, 2011, the Commission received a petition for review of the Postal Service's determination to close the Carolina post office in Carolina, West Virginia. The petition for review was filed by Jack Fuller (Petitioner) and is postmarked September 21, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–95 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 2, 2011.

Issue apparently raised. Petitioner contends that the Postal Service failed to provide substantial evidence in support of the determination. *See* 39 U.S.C. 404(d)(5)(c).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 13, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 13, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 13, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 28, 2011	Filing of Appeal.
October 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 13, 2011	Deadline for the Postal Service to file any responsive pleading.
October 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 2, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 22, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 7, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 14, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 19, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25941 Filed 10–6–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–94; Order No. 887]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Auburn, West Virginia post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 13, 2011; *deadline for notices to intervene:* October 25, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 28, 2011, the Commission received a petition for review of the Postal Service's determination to close the Auburn post office in Auburn, West Virginia. The petition for review was filed by Save the Auburn Post Office Committee and the Auburn Town Council (Petitioners) and is postmarked September 22, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–94 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 2, 2011.

Issues apparently raised. Petitioners contend that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the

Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 13, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Web master via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 13, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 13, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James Waclawski is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 28, 2011	Filing of Appeal.
October 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 13, 2011	Deadline for the Postal Service to file any responsive pleading.
October 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 2, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 22, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 7, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 14, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 20, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25940 Filed 10–6–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–93; Order No. 886]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Freedom, Wyoming post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 12, 2011; *deadline for notices to intervene:* October 25, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 27, 2011, the Commission received two petitions for review of the Postal Service's determination to close the Freedom post office in Freedom, Wyoming. The first petition for review was filed by Gary Hokanson. The second petition for review was filed by Ida and Dee Hokanson. The earliest postmark date is

September 12, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–93 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 1, 2011.

Issues apparently raised. Petitioners contend that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 12, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 12, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 12, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 12, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Malin Moench is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 27, 2011	Filing of Appeal.
October 12, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 12, 2011	Deadline for the Postal Service to file any responsive pleading.
October 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 1, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 21, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 6, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 13, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 10, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25939 Filed 10–6–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–100; Order No. 893]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Mallory, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 13, 2011; *deadline for notices to intervene:* October 25, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system

at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 28, 2011, the Commission received a petition for review of the Postal Service's determination to close the Mallory post office in Mallory, New York. The petition for review was filed by Mark Burghart (Petitioner) and is postmarked September 17, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–100 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 2, 2011.

Issue apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 13, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 13, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 13, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 28, 2011	Filing of Appeal.
October 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 13, 2011	Deadline for the Postal Service to file any responsive pleading.
October 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 2, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 22, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 7, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 14, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 18, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25995 Filed 10–6–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–99; Order No. 892]

Post Office Closing

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ingleside, Maryland post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 13, 2011; *deadline for notices to intervene:* October 25, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 28, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ingleside post office in Ingleside, Maryland. The petition for review was filed by Christopher Vaught (Petitioner) and is postmarked September 15, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–99 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 2, 2011.

Issue apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 13, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 13, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 13, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,
Acting Secretary.

PROCEDURAL SCHEDULE

September 28, 2011	Filing of Appeal.
October 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 13, 2011	Deadline for the Postal Service to file any responsive pleading.
October 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).

PROCEDURAL SCHEDULE—Continued

November 2, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 22, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 7, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 14, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 13, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25994 Filed 10–6–11; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Science and Technology Council, Committee on Technology; 2011 National Nanotechnology Initiative Environmental, Health, and Safety Strategy Webinar

ACTION: Notice of webinar.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will hold a webinar on Thursday, October 20, 2011, to provide an open forum to answer questions related to the 2011 Federal government's strategy for research on environmental, health, and safety aspects of nanomaterials. Nanomaterial Measurement Infrastructure, Human Exposure Assessment, Human Health, the Environment, Risk Assessment and Risk Management Methods, and Informatics and Modeling are the six environmental, health, and safety research categories identified in the 2011 NSET Subcommittee document NNI *Environmental, Health, and Safety Research Strategy* (*http://www.nano.gov*).

DATES: The webinar will be held on Thursday, October 20, 2011 from 12 p.m. until 12:45 p.m.

ADDRESSES: For information about the webinar, please see *http://www.nano.gov*.

Submitting Questions: Questions may be submitted beforehand to *webinar@nnco.nano.gov* beginning at noon (EDT) Wednesday, October 19, 2011 and will be accepted until the close of the webinar at 12:45 p.m. Thursday, October 20, 2011. Questions submitted to *webinar@nnco.nano.gov* will be considered in the order received during the 20 minute question-and-answer segment of the webinar. The moderator reserves the right to group similar questions and to skip questions that are either repetitive or not germane to the topic. Due to time constraints, not all questions may be answered.

Information about the webinar is posted at *http://www.nano.gov*.

The webinar will feature brief comments by NNI agency representatives and by outside experts, followed by approximately 20 minutes to answer audience questions.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Liesl Heeter, telephone (703) 292–4533, or Marlowe Epstein, telephone (703) 292–7128, National Nanotechnology Coordination Office. E-mail: *webinar@nnco.nano.gov*.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–26048 Filed 10–6–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29826]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 30, 2011.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2011. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 2011, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–8010.

Hartford Income Shares Fund Inc. [File No. 811–2281]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 22, 2010, applicant transferred its assets to Rivus Bond Fund, based on net asset value. Expenses of approximately $834,811 incurred in connection with the reorganization were paid by Cutwater Asset Management Corp., investment adviser for the acquiring fund, and Hartford Investment Financial Services, LLC, applicant's investment adviser.

Filing Dates: The application was filed on August 10, 2011, and amended on September 21, 2011.

Applicant's Address: P.O. Box 2999, Hartford, CT 06104–2999.

Columbia Funds Series Trust A [File No. 811–21862]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 28, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $69,450 incurred in connection with the liquidation were paid by Columbia Management Investment Advisers, LLC, applicant's investment adviser.

Filing Date: The application was filed on September 12, 2011.

Applicant's Address: 225 Franklin St., Boston, MA 02110.

Oppenheimer Baring SMA International Fund [File No. 811–21915]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 9, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on September 1, 2011.

Applicant's Address: 6803 S. Tucson Way, Centennial, CO 80112.

Blankinship Funds Inc. [File No. 811–21387]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 21, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on July 22, 2011, and amended on September 2, 2011.

Applicant's Address: 1210 S. Huntress Ct., McLean, VA 22102.

650 High Income Fund, Inc. [File No. 811–7359]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 22, 2011, applicant made a final liquidating distribution to its shareholders, based on net asset value. Distributions payable to unlocated shareholders are being held by American Stock Transfer & Trust Company. Any unclaimed funds will eventually escheat to the various states. Expenses of $170,147 incurred in connection with the liquidation were paid by applicant. Expenses in the amount of $297,816 have been accrued, but have not yet been paid in full. Applicant has placed $250,000 in cash in a reserve account to cover an insurance policy deductible for its officers and directors, which amount is included in applicant's accrued but unpaid expenses. Any amounts remaining from the reserve account would eventually be distributed to applicant's shareholders.

Filing Dates: The application was filed on April 28, 2011, and amended on July 1, 2011 and August 29, 2011.

Applicant's Address: 650 Madison Ave., 19th Floor, New York, NY 10022.

Separate Account VA GG [811–22477]

Summary: The Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company based on abandonment of registration. The Applicant has no policyholders. Transamerica Life Insurance Company, as the Applicant's depositor, has determined that the Applicant should be deregistered inasmuch as it is not engaged in or intending to engage in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on August 26, 2011.

Applicant's Address: Separate Account VA GG, Transamerica Life Insurance Company, 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499–0001.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25925 Filed 10–6–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29827; File No. 812–13606]

MFS Series Trust I, *et al.*; Notice of Application

September 30, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: MFS Series Trust I, MFS Series Trust II, MFS Series Trust III, MFS Series Trust IV, MFS Series Trust V, MFS Series Trust VI, MFS Series Trust VII, MFS Series Trust VIII, MFS Series Trust IX, MFS Series Trust X, MFS Series Trust XI, MFS Series Trust XII, MFS Series Trust XIII, MFS Series Trust XIV, MFS Series Trust XV, MFS Series Trust XVI, MFS Municipal Series Trust, MFS Variable Insurance Trust, MFS Variable Insurance Trust II, Massachusetts Investors Trust, Massachusetts Investors Growth Stock Fund, MFS Institutional Trust (each, a ''Trust'') and Massachusetts Financial Services Company (''MFS'').

DATES: *Filing Dates:* The application was filed on November 20, 2008, amended on May 7, 2009, July 22, 2010 and September 16, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 25, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, Massachusetts Financial Services Company, 500 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811 or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. Each Trust may consist of one or more series and may offer additional series in the future (''Funds''). MFS, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, and

serves as the investment adviser to each Fund.[1]

2. Some Funds, including money market Funds that rely on rule 2a–7 under the Act (''Money Market Funds''), may lend money to banks or other entities by entering into repurchase agreements, purchasing other short-term instruments, or, in the case of Funds other than the Money Market Funds, investing in the MFS Institutional Money Market Fund (''IMMF'') pursuant to rule 12d1–1 under the Act. Other Funds may borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. Currently, the Trusts have a committed credit facility provided by a syndicate of lenders and uncommitted lines of credit with two separate banks (collectively, the ''Loan Agreements''). The Funds also have an overdraft facility with their custodians.

3. If a Fund were to borrow money under a Loan Agreement, the Fund would pay interest on the borrowed cash at a rate which would be higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. In addition, while bank borrowings generally can supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds incur commitment fees and/or other charges involved in obtaining a bank loan.

4. Applicants request an order that would permit each Trust to enter into master interfund lending agreements (''Interfund Lending Agreements'') that would permit each Fund to lend and borrow money for temporary purposes directly to and from each other Fund through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would reduce the Funds' borrowing costs and enhance their ability to earn higher interest rates on short-term lendings. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish or renew committed lines of credit or other borrowing arrangements with unaffiliated banks.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities ''fails'' due to circumstances such as a delay in the delivery of cash to a Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if a Fund has undertaken to purchase securities using the proceeds from the securities sold. As a result, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same-day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity.

7. While bank borrowings generally can supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to a Fund on any Interfund Loan (''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate on any day would be the highest rate available to a lending Fund from investing in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by the ''Interfund Lending Committee'' (as defined below) each day an Interfund Loan is made according to a formula established by each Fund's board of trustees (''Fund Board'') intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.,* Federal funds rates and/or Libor), plus an additional spread of basis points and would vary with this rate so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund Board. Each Fund Board would at least annually review the continuing appropriateness of using the method of calculating the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds.

9. The credit facility would be administered by investment professionals and administrative personnel from MFS (the ''Interfund Lending Committee''). No portfolio manager, including research analysts with portfolio management responsibilities, for any Fund will serve as a member of the Interfund Lending Committee. Under the proposed credit facility, senior members of MFS' investment management team and senior administrative and management personnel (the ''Investment Management Committee'') or a portfolio manager for each participating Fund could provide standing instructions to the Interfund Lending Committee that the participating Fund is authorized to participate as a borrower or lender; alternatively, the portfolio manager could provide instructions from time to time as to when the Fund wishes to participate as a borrower or a lender. The Interfund Lending Committee, no more frequently than once daily in the morning of each business day that a transaction is requested under the credit facility pursuant to instructions (an ''Interfund Lending Day''), would request and collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it has determined the aggregate amount of cash available for loans and borrowing demand, the Interfund Lending Committee would allocate loans among borrowing Funds without any further communication from a Fund's portfolio managers. Applicants expect there will typically be more available uninvested cash each day than borrowing demand. After the Interfund Lending Committee

[1] Applicants request that the relief apply to (a) any Fund, (b) any successor entity to MFS, and (c) any other registered open-end management investment company or its series advised by MFS and for which MFS Fund Distributors, Inc. (''MFD'') or a person controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with MFD serves as principal underwriter (each, also a ''Fund''). The term ''successor'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization. All entities that currently intend to rely on the requested relief are named as applicants. Any other existing or future Funds that subsequently rely on the order will comply with the terms and conditions set forth in the application.

has allocated cash for Interfund Loans, MFS' cash desk personnel would invest any remaining cash in accordance with the Funds' investment policies and practices in the ordinary course.

10. The Interfund Lending Committee would allocate borrowing demand and cash available for lending among the Funds on what the Interfund Lending Committee believes to be an equitable basis, subject to certain administrative considerations applicable to all participating Funds, such as the time of filing requests to participate, minimum loan lot sizes, the need to minimize the number of transactions and associated administrative costs, and the amount of the existing borrowings outstanding. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund Board, including a majority of trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Fund Board Members''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The Interfund Lending Committee would (a) monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) directly or through MFS make quarterly reports to each Fund Board concerning any transactions by the Funds under the credit facility and the Interfund Loan Rate charged.

12. MFS, through the Interfund Lending Committee, would administer the credit facility as a fiduciary as part of its duties under the investment management contract with each Fund and provide administrative support pursuant to the administrative services agreement between each Fund and MFS and would receive no additional fee as compensation for its services.

13. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information (''SAI''); and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations and organizational documents.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having MFS as their common investment adviser and/or by having a common Fund Board and officers.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and reports filed under the Act and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) MFS, through the Interfund Lending Committee, would administer the program as a fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the lending Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could otherwise obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements. Moreover, applicants believe that the other terms and conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 17(a)(2) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section.

5. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for the purposes of sections 17(a)(1) and 12(d)(1). Applicants also state that any pledge of assets in connection with an Interfund Loan could be construed as a purchase of the borrowing Fund's securities or other property for purposes of section 17(a)(2) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections

17(a)(3) and 21(b) and for the reasons discussed below. Applicants also state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an Interfund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or less restrictive conditions (in any other circumstance). Any collateral pledged to secure an Interfund Loan will be available solely to secure repayment of such Interfund Loan.

6. Applicants state that, among other things, section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or shareholders, and that MFS will receive no additional compensation for its services in administering the credit facility through the Interfund Lending Committee. Applicants also note that the entire purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds and their shareholders.

7. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

8. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

9. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d–1(b) provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

10. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day that the Interfund Lending Committee considers whether to use Interfund Loans, the Interfund Lending Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (a) More favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any money market fund approved by the Investment Management Committee as a money market fund in which the lending Fund could otherwise invest; and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund: (a) Will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the proposed credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the proposed credit facility only on a secured basis. A Fund may not borrow through the proposed credit facility or from any other source if its total outstanding borrowings immediately after such borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a

market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the proposed credit facility if the loan would cause its aggregate outstanding loans through the proposed credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to no more than the number of days required to receive payment for securities sold, up to a maximum of seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. The Fund's borrowings through the proposed credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the proposed credit facility must be consistent with its investment objectives and limitations and organizational documents.

12. The Interfund Lending Committee, on each Interfund Lending Day, will calculate total Fund borrowing and lending demand through the proposed credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of participating Funds. The Interfund Lending Committee will not solicit cash for loans from any Fund or prospectively publish or disseminate the amount of current borrowing demand to the Investment Management Committee or portfolio managers of the Funds. Once it determines the aggregate amount of cash available for loans and borrowing demand, the Interfund Lending Committee will allocate loans among borrowing Funds without any further communication from a Fund's portfolio managers. If there is more available uninvested cash than borrowing demand on any Interfund Lending Day, any remaining cash will be invested in accordance with the Funds' investment policies and practices in the ordinary course.

13. The Interfund Lending Committee will monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to each Fund Board concerning the participation of the Funds in the proposed credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. Each Fund Board, including a majority of the Independent Fund Board Members, will:

(a) Review, no less frequently than quarterly, each Fund's participation in the proposed credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) Review at least annually the continuing appropriateness of the method used to calculate the Bank Loan Rate; and

(c) Review, no less frequently than annually, the continuing appropriateness of each Fund's participation in the proposed credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, MFS will promptly refer such loan for arbitration to an independent arbitrator who was selected by each Fund Board involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any dispute promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to each Fund Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the proposed credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time on overnight repurchase agreements and commercial bank borrowings, and such other information presented to the Fund Board in connection with the review required by conditions 13 and 14.

17. MFS, through or on behalf of the Interfund Lending Committee, will prepare and submit to the Fund Board for review an initial report describing how the proposed credit facility will operate and the procedures to be implemented to ensure that all Funds are treated fairly. For each calendar quarter after the commencement of the credit facility, the Interfund Lending Committee will report on the operations of the credit facility at the Fund Board's quarterly meetings.

Each Fund's chief compliance officer (''CCO''), as defined in rule 38a–1(4) under the Act, shall prepare an annual report for its Fund Board each year that the Fund participates in the proposed credit facility, that evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Each Fund's CCO will also annually file a certification pursuant to Item 77Q3 of Form N–SAR as such Form may be revised, amended, or superseded from time to time for each year that the Fund participates in the proposed credit facility, that certifies that the Fund and MFS have established procedures reasonably designed to achieve compliance with the terms and conditions of the order. In particular, such certification will address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate is higher than the Repo Rate, but lower than the Bank Loan Rate;

(b) Compliance with the collateral requirements as set forth in the Interfund Loan Borrowing Conditions;

(c) Compliance with the percentage limitations on interfund borrowing and lending;

(d) Allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Fund Board; and

(e) That the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

[2] If the dispute involves Funds with different Fund Boards, the respective Fund Boards will select an independent arbitrator that is satisfactory to each Fund.

Additionally, each Fund's independent auditors, in connection with their audit examinations of the Fund, will review the operation of the credit facility for compliance with the Interfund Loan Borrowing Conditions and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the proposed credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25926 Filed 10–6–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29829; File No. 812–13830]

Global X Funds, *et al.*; Notice of Application

September 30, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order to supersede a prior order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Creation Units for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares. The order would supersede a prior order.[1]

APPLICANTS: Global X Funds (the ''Trust''), Global X Management Company LLC (the ''Adviser'') and SEI Investments Distribution Company (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on October 4, 2010, and amended on March 11, 2011, July 29, 2011 and September 30, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 27, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Global X Funds and Global X Management Company LLC, 399 Park Avenue, 32nd Floor, New York, NY 10022; and SEI Investments Distribution Company, One Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel at (202) 551–6873, or Dalia Osman Blass, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a statutory trust organized under the laws of Delaware, is registered with the Commission as an open-end management investment company. The Trust consists of 86 series (''Current Funds'') whose performance correspond to the price and yield performance of a specified securities index (each, an ''Underlying Index'').

2. Applicants request that the order apply to the Current Funds or any future series of the Trust or any other open-end management investment companies or series thereof advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser that comply with the terms and conditions of the application and whose performance will closely correspond to the price and yield performance of their Underlying Index (each such company or series, a ''Future Fund'' and together with the Current Funds, the ''Funds'').

3. The Current Funds are based on Underlying Indexes comprised solely of equity securities. The Future Funds will invest primarily in equity securities and seek investment returns that closely correspond to the price and yield performance of Underlying Indexes comprised of equity securities (''Equity Funds''), or invest primarily in Underlying Indexes comprised of fixed income securities and seek investment returns that closely correspond to the price and yield performance of Underlying Indexes comprised of fixed income indices (''Fixed Income Funds''). Certain of the Funds may invest in equity securities or fixed income securities traded in foreign markets and seek investment results that correspond closely to the price and yield performance of Underlying Indexes whose component securities include such securities (''International Funds''). The Funds may also invest in a combination of equity, fixed income and U.S. money market securities and/or non-U.S. money market securities. The Funds may also invest in ''Depositary Receipts.''[2] A Fund will not invest in any Depositary Receipts that the Adviser or Subadviser deems to be illiquid or for which pricing information is not readily available.

4. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser or any entity controlling, controlled by or under common control with the Adviser (also included in the term ''Adviser'') serves or will serve as investment adviser to the Funds, subject to approval by the Board of Trustees of the Trust

[1] Global X Funds and Global X Management Company LLC, Investment Company Act Release Nos. 28378 (Sep. 10, 2008) (notice) and 28433 (Oct. 3, 2008) (order).

[2] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants will serve as the depositary bank for any Depositary Receipts held by a Fund.

(the ''Board''). The Adviser and the Trust may hire one or more subadvisers for the Funds (each, a ''Subadviser''). Any Subadviser will be registered under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Shares.

5. Each Fund will consist of a portfolio of securities and other instruments (''Portfolio Securities'') selected to correspond to the price and yield performance of a specified Underlying Index. No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust or a Fund, a promoter of a Fund, the Adviser, any Subadviser, or a Distributor.

6. The investment objective of each Fund will be to provide investment results that closely correspond to the price and yield performance of its Underlying Index.[3] Each Fund will sell and redeem Creation Units on a ''Business Day,'' which is defined as any day that a Fund is required to be open under section 22(e) of the Act. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy invests or will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy holds or will hold some, but not necessarily all of the Component Securities of its Underlying Index.[4] Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5 percent.

7. Creation Units are expected to consist of at least 25,000 Shares and to have an initial price in the range of $375,000 to $10,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). The Distributor also will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

8. Shares of the Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities (the ''Deposit Securities''), designated by the Adviser, together with the deposit or refund of a specified cash payment (''Cash Component'' and collectively with the Deposit Securities, ''Fund Deposit''). The Cash Component is an amount equal to the difference between (a) the net asset value (''NAV'') per Creation Unit of a Fund and (b) the total aggregate market value per Creation Unit of the Deposit Securities.[5] Each Fund may permit a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities, under certain circumstances. To preserve maximum efficiency and flexibility, a Fund reserves the right to accept and deliver Creation Units entirely for cash (''All-Cash Payment''), if doing so would reduce the Fund's transaction costs or enhance the Fund's operating efficiency.

9. An investor acquiring or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[6] Variations in the Transaction Fees may be imposed from time to time in accordance with rule 22d–1 under the Act. Transaction Fees will be limited to amounts that have determined by the Adviser to be appropriate and will take into account transaction costs associated with the relevant Deposit Securities and Fund Securities (as defined below) of the Funds. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

10. Purchasers of Shares in Creation Units may hold the Shares or may sell the Shares into the secondary market. Shares will be listed and traded on an Exchange.[7] It is expected that one or more Exchange market makers (''Market Makers''), will be assigned to the Shares and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[8] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade

[3] Applicants represent that each Fund will invest at least 80% of its total assets (exclusive of collateral held from securities lending) in the component securities that comprise its Underlying Index (''Component Securities''), in the case of International Funds, in Component Securities and Depositary Receipts representing such Component Securities, or in the case of certain Fixed Income Funds, in Component Securities and TBAs (as defined below) representing Component Securities. Each Fund also may invest up to 20% of its total assets in futures contracts, options on future contracts, options and swaps, cash, cash equivalents, other investment companies, and securities that are not Component Securities but which the Adviser or Subadviser believes will assist the Fund in tracking the performance of its Underlying Index.

[4] Securities are selected for inclusion in a Fund following a representative sampling strategy to have aggregate investment characteristics, fundamental characteristics, and liquidity measures similar to those of the Fund's Underlying Index taken in its entirety.

[5] On each Business Day, prior to the opening of trading on the Exchange, a list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on the information at the end of the previous Business Day) for each Fund or cash information for each Fund, including when the purchase of Creation Units from the Fund is an All-Cash Payment (as defined below), will be made available. In addition, the All-Cash Payment will be disclosed, if applicable. The national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which Shares are listed will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association, an amount representing on a per Share basis, the sum of the current value of the Fund Deposit.

[6] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities.

[7] Shares of the Current Funds are listed and traded on NYSE Arca, Inc.

[8] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender the Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) Portfolio Securities designated by the Adviser to be delivered for redemptions (''Fund Securities'') on the date that the request for redemption is submitted and (b) a ''Cash Redemption Amount,'' consisting of an amount calculated in the same manner as the Cash Component. An investor may receive the cash equivalent of a Redemption Security upon request because it is constrained from effecting transactions in the security by regulation or policy.[9] A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

13. Applicants state that in accepting Deposit Securities and satisfying redemptions with Fund Securities, the relevant Funds will comply with the federal securities laws, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act'').[10] The specified Deposit Securities and Fund Securities either (a) will correspond pro rata to the Portfolio Securities of a Fund, or (b) will not correspond pro rata to the Portfolio Securities, provided that the Deposit Securities and Fund Securities (i) consist of the same representative sample of Portfolio Securities designed to generate performance that is highly correlated to the performance of the Portfolio Securities, (ii) consist only of securities that are already included among the existing Portfolio Securities, and (iii) are the same for all Authorized Participants on a given Business Day.[11]

14. Neither the Trust nor any individual Fund will be advertised, marketed or otherwise held out as an open-end fund or a mutual fund. Instead, each Fund will be marketed as an ''exchange–traded fund'' or an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units only. The The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares at market prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act

[9] Applicants state that Fixed Income Funds may substitute a cash-in-lieu amount to replace any ''to-be-announced'' (''TBA'') transaction that is listed as a Deposit Security or Fund Security of any Fund. A TBA transaction is a method of trading mortgage-backed securities where the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA transactions will be equivalent to the value of the TBA transaction listed as a Deposit Security or a Fund Security.

[10] In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A.

[11] In either case, a basket of Deposit Securities and basket of Fund Securities (and a true pro rata slice of the Portfolio Securities) may differ solely to the extent necessary (a) Because it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement, (b) because, in the case of equity securities, rounding is necessary to eliminate fractional shares or lots that are not tradable round lots, or (c) for temporary periods, to effect changes in the Portfolio Securities as a result of the rebalancing of an Underlying Index. A tradable round lot for an equity security will be the standard unit of trading in that particular type of security in its primary market.

with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the International Funds is contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles present in international markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Fund Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each International Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[12]

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state that an International Fund's statement of additional information will disclose those local holidays, if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days, up to 14 calendar days, needed to deliver the proceeds for each affected International Fund. Applicants are not seeking relief from section 22(e) with respect to International Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not sponsored or advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Investing Funds'') to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit a Fund or broker-dealer that is registered under the Exchange Act (''Broker'') to sell Shares to Investing Funds in excess of the limits of section 12(d)(1)(B).

11. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Investing Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Investing Fund Subadviser''). Any investment adviser to an Investing Fund will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Investing Funds nor an Investing Fund Affiliate would be able to exert undue influence over the Funds.[13] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting an Investing Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'')

[12] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade.

[13] An ''Investing Fund Affiliate'' is the Investing Fund Adviser, Investing Fund Subadviser(s), any Sponsor, promoter, or principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Subadviser, any person controlling, controlled by or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by or under common control with the Investing Fund Subadviser (''Investing Fund's Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, Sponsor, or employee of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, Sponsor, or employee is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. In addition, under condition B.5, an Investing Fund Adviser or a trustee (''Trustee'') or Sponsor of an Investing Trust will, as applicable, waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Investing Fund Adviser, Trustee or Sponsor or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Investing Fund in the Fund. Applicants state that any sales charges or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[14]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act. To ensure that Investing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Investing Fund that intends to invest in a Fund in reliance on the requested order will enter into an agreement (''FOF Participation Agreement'') between the Fund and the Investing Fund requiring the Investing Fund to adhere to the terms and conditions of the requested order. The FOF Participation Agreement also will include an acknowledgement from the Investing Fund that it may rely on the requested order only to invest in Funds and not in any other investment company.

16. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by an Investing Fund. To the extent that an Investing Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the FOF Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security to or acquiring any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or second-tier affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through ''in-kind'' transactions. The deposit procedures for both in kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. The composition of a Fund Deposit made by a purchaser or Fund Redemption given to a redeeming investor (except for any cash in lieu amounts) on any Business Day will be the same regardless of the investor's identity, and Fund Deposits and Fund Redemptions will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or second-tier affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of an Investing Fund to sell its Shares to and redeem its Shares

[14] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by Financial Industry Regulatory Authority.

from an Investing Fund.[15] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Investing Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Shares.[16] Applicants believe that any proposed transactions directly between the Funds and Investing Funds will be consistent with the policies of each Investing Fund. The purchase of Creation Units by an Investing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Exchange Traded Fund Relief

1. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Shares of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding Shares of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to a Fund for which the Investing Fund Subadviser or a person controlling, controlled by, or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Adviser and any Investing Fund Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Fund Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. The Investing Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver

[15] Applicants believe that an Investing Fund generally will purchase Shares of the Funds in the secondary market and will not purchase or redeem Creation Units directly from a Fund. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to cover the transactions that would accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of an Investing Fund because the Adviser or an entity controlling, controlled by or under common control with the Adviser is also an investment adviser to the Investing Fund.

[16] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in Fund Shares exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in Fund Shares in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Fund Shares in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25928 Filed 10–6–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29828; File No. 812–13922]

Incapital LLC, *et al.*; Notice of Application

September 30, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A), (B) and (C) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain series of a registered unit investment trust to acquire shares of registered management investment companies and unit investment trusts or series thereof (the ''Funds'') both within and outside the same group of investment companies.

APPLICANTS: Incapital LLC (the ''Depositor''), and Incapital Unit Trust (the ''Trust'').

FILING DATES: The application was filed on July 13, 2011, and amended on September 27, 2011 and September 29, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 25, 2011, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: 200 South Wacker Drive, Suite 3700, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 551–6813, or Dalia Osman Blass, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a UIT registered under the Act.[1] Each Series will be a series of a Trust and will offer units for sale to the public (''Units''). Each Series will be created pursuant to a trust agreement which will incorporate by reference a master trust agreement between the Depositor and a financial institution that satisfies the criteria in section 26(a) of the Act (the ''Trustee''). The Depositor is a broker dealer registered under the Securities Exchange Act of 1934 and member of the Financial Industry Regulatory Authority, Inc. (''FINRA'').

2. Applicants request relief to permit a Series to invest in registered investment companies or series thereof (''Funds'') that are (a) part of the same ''group of investment companies'' (as that term is defined in section 12(d)(1)(G) of the Act) as the Series (''Affiliated Funds''), and (b) not part of the same group of investment companies as the Series (''Unaffiliated Funds''). Each of the Funds will be registered as a closed-end investment company (''Closed-end Fund''), an open-end investment company (''Open-end Fund'') or a UIT. An Unaffiliated Fund that is a UIT is referred to as an ''Unaffiliated Underlying Trust.'' An Unaffiliated Fund that is a Closed-end Fund or Open-end Fund is referred to as an ''Unaffiliated Underlying Fund.'' Certain of the Funds may be registered as Open-end Funds or UITs, but have received exemptive relief in order that their shares may be traded at ''negotiated prices'' on a national securities exchange in the same manner as other equity securities (the ''Exchange-traded Funds''). Shares of Exchange-traded Funds and Closed-end Funds will be deposited in a Series at prices which are based on the market value of the securities, as determined by an evaluator. The Depositor does not have discretion as to when portfolio securities of a Series will be sold, except that the Depositor is authorized to sell securities in extremely limited circumstances described in the Series' prospectus.

3. Applicants state that the requested relief will provide investors with a practical, cost-efficient means of investing in a professionally selected, diversified portfolio of securities of investment companies. Each Series may also make investments in securities that are not issued by registered investment companies.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the value of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer (''Broker'') from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or UIT acquired by a registered UIT if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met, including that the only other investments held by the acquiring company are government securities and short-term paper. Applicants state that they may not rely on section 12(d)(1)(G) because a Series will invest in Unaffiliated Funds and securities other than government securities and short-term paper in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Series to purchase or otherwise acquire shares of the Funds in excess of the percentage limitations of sections 12(d)(1)(A) and (C), and the Open-end Funds, their principal underwriters and any Broker to sell their shares to the Series in excess of the percentage limitations of section 12(d)(1)(B).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the concern about undue control does not arise with respect to a Series' investment in Affiliated Funds, as reflected in section 12(d)(1)(G) of the Act. Applicants also state that the proposed arrangement will not result in undue influence by a Series or its affiliates over Unaffiliated Funds. Applicants have agreed that (a) the Depositor, (b) any person controlling, controlled by or under common control with the Depositor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, sponsored or advised by the Depositor (or any person controlling, controlled by or under common control with the Depositor) (collectively, the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. Applicants also note that conditions 2, 3, 5 and 6 set forth below will address the concern about undue influence with respect to the Unaffiliated Funds.

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Series under the requested order, prior to a Series' investment in the Unaffiliated Underlying Fund in excess of the limit in Section 12(d)(1)(A)(i), the Series and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the Depositor and

[1] Applicants request that the order also extend to future registered unit investment trust (''UITs'') sponsored by the Depositor or an entity controlling, controlled by or under common control with the Depositor and their respective series (the future UITs, together with the Trust, are collectively the ''Trusts'' and the series of the Trusts are the ''Series''). All existing entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

Trustee and the board of directors or trustees to the Unaffiliated Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Underlying Fund, including a closed-end Fund or an Exchange-traded Fund, may choose to reject an investment from the Series by declining to execute the Participation Agreement.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that any sales charges and/or service fees (as those terms are defined in Rule 2830 of the Conduct Rules of the NASD, Inc. (''NASD Conduct Rules'') [2] charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.[3] In addition, the Trustee or Depositor will waive fees otherwise payable to it by the Series in an amount at least equal to any compensation (including fees paid pursuant to any plan adopted by an Unaffiliated Underlying Fund under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Trustee or Depositor, or an affiliated person of the Trustee or Depositor, other than any advisory fees paid to the Trustee or Depositor or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by the Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. Applicants also represent that a Series' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Funds.

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), acting as principal, from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Series and an Affiliated Fund might be deemed to be under the common control of the Depositor or an entity controlling, controlled by, or under common control with the Depositor. Applicants also state that a Series and a Fund might become ''affiliated persons'' if the Series acquires more than 5% of the Fund's outstanding voting securities. The sale or redemption by a Fund of its shares to or from a Series therefore could be deemed to be a principal transaction prohibited by Section 17(a) of the Act.[4]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the proposed transactions are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the open-end Funds and Funds that are UITs will be based on the net asset values of the Funds. Finally, Applicants state that the proposed transactions will be consistent with the policies of each Series and Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. No Series or its Depositor, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities (each, a ''Series Affiliate'') will cause any existing or potential investment by the Series in an Unaffiliated Fund to influence the terms of any services or transactions between the Series or Series Affiliate and the Unaffiliated Fund or its investment adviser(s), sponsor, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of the Unaffiliated Underlying Fund, including a majority of the disinterested board members, will determine that any

[2] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to Conduct Rule 2830 that may be adopted by FINRA.

[3] With respect to purchasing closed-end Funds or Exchange-traded Fund shares, a Series may incur the customary brokerage commissions associated with purchasing any equity security on the secondary market.

[4] To the extent purchases and sales of shares of an Exchange-traded Fund occur in the secondary market (and not through principal transactions directly between a Series and an Exchange-traded Fund), relief from section 17(a) would not be necessary. The requested relief is intended to cover, however, transactions directly between Exchange-traded Funds and a Series. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an Exchange-traded Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Series because the investment adviser to the Exchange-traded Fund or an entity controlling, controlled by or under common control with the investment adviser is also a depositor to the Series. In addition, the request for relief does not cover principal transactions with Closed-end Funds.

consideration paid by the Unaffiliated Underlying Fund to the Series or Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Underlying Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

4. The Trustee or Depositor will waive fees otherwise payable to it by the Series, in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Underlying Fund under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Trustee or Depositor, or an affiliated person of the Trustee or Depositor, other than any advisory fees paid to the Trustee or Depositor or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by a Series in the Unaffiliated Fund.

5. No Series or Series Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is the Depositor or a person of which the Depositor is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. The board of an Unaffiliated Underlying Fund, including a majority of the disinterested board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Unaffiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Series in the Unaffiliated Underlying Fund. The board of the Unaffiliated Underlying Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board of the Unaffiliated Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. An Unaffiliated Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the board of the Unaffiliated Underlying Fund were made.

8. Before investing in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), each Series and the Unaffiliated Underlying Fund will execute a Participation Agreement stating, without limitation, that the Depositor and Trustee, and the board of directors or trustees of the Unaffiliated Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment, and for a period not less than six years thereafter, the first two years in an easily accessible place.

9. Any sales charges and/or service fees charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25927 Filed 10–6–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65467; File No. SR–NASDAQ–2011–136]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Options Market Rules Chapter VII, Section 6, Market Maker Quotations

October 3, 2011.

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, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 the Substance of the Proposed Rule Change

NASDAQ is filing a proposal for the NASDAQ Options Market (''NOM'') to amend Chapter VII, Section 6, Market Maker Quotations, to permit wider bid/ask differentials to correspond to the width of the market in the underlying security, as described below.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify recently-adopted bid/ask differentials. The new bid/ask differentials, also known as quotation spread parameters, establish the maximum permissible width between a Market Maker's bid and an offer in a particular series. Recently, NASDAQ adopted a $5 wide quote spread parameters for all options.[3] Previously, there was no quote spread requirement and NASDAQ adopted the $5 wide requirement in order to encourage narrower markets and thereby improve the quality of NOM's markets.

At this time, NASDAQ proposes to permit wider bid/ask differentials to correspond to the width of the market in the underlying security. Specifically, NASDAQ proposes to amend Chapter VII, Section 6, Market Maker Quotations, to provide that respecting in-the-money series[4] where the market for the underlying security is wider than $5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market.[5] For instance, under the current rule, where the market for the underlying security in the primary market is $60–$70, the applicable quote spread parameter is $5, but under the proposed language, it would be $10 for the in-the-money series, which is the spread in the underlying security in the primary market. NASDAQ believes that this is appropriate because options are priced relative to the price of the security underlying that option and are often hedged with the underlying security as well; accordingly, the price of an in-the-money option is particularly constrained by a quote spread parameter requirement that does not take into account a quote spread in the underlying security greater than $5.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest because it will help conform NOM's rules to those of other exchanges, as described below, which should, in term, avoid confusion and promote competition among exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NOM Rules, Chapter VII, Section 6(d)(ii). Securities Exchange Act Release No. 64054 (March 8, 2011), 76 FR 14111 (March 15, 2011).

[4] In-the-money series are those series, where, in the case of call options, the current market price of the underlying security is higher than the strike price, or, in the case of put options, the current market price of the underlying security is lower than the strike price.

[5] Primary market is defined in Chapter I, Section 1(a)(47) as, in the case of securities listed on Nasdaq, the market that is identified as the listing market pursuant to Section X(d) of the approved national market system plan governing the trading of Nasdaq-listed securities, and, in the case of securities listed on another national securities exchange, the market that is identified as the listing market pursuant to Section XI of the Consolidated Tape association Plan.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–136 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–136. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–136, and should be submitted on or before October 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25957 Filed 10–6–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65469; File No. SR–Phlx–2011–108]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Functionality on NASDAQ OMX PSX

October 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on September 21, 2011, NASDAQ OMX PHLX LLC (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 routing functionality to the NASDAQ OMX PSX facility of NASDAQ OMX PHLX (''System''). Specifically, the Exchange proposes to adopt new Rule 3315, Order Routing, and amend Rule 3301, Definitions, and Rule 3305, Order Entry Parameters, as described below. The Exchange intends to implement the proposal upon notice to its membership.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, 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 aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to attract additional business to and enhance the functionality offered by PSX by providing optional outbound routing services. Most equities exchanges today provide routing services. The Exchange intends to offer routing strategies materially identical to several currently offered by its affiliate, The NASDAQ Stock Market, LLC (''NASDAQ'').[3] Nasdaq Execution Services LLC is NASDAQ's routing broker and provides routing functions for NASDAQ. As described in detail below, the Exchange proposes to use Nasdaq Execution Services LLC as its routing broker to provide all of its PSX routing services as well. Specifically, the Exchange proposes to permit Nasdaq Execution Services LLC to route orders from PSX to all market centers, as it does for NASDAQ, including to NASDAQ and NASDAQ OMX BX (''BX'').[4]

First, PHLX proposes to amend two existing rules to accommodate routing. Specifically, PHLX proposes to amend subparagraph (f)(6) of Rule 3301, Definitions, which pertains to Intermarket Sweep Orders (''ISOs''). These are currently defined as limit orders that are designated as ISOs in the manner prescribed by the Exchange and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) of Regulation NMS under the Act. ISOs are immediately executable within the System pursuant to PHLX Rule 3307. PHLX proposes to add that ISOs are not eligible for routing as set out in new Rule 3315.[5]

In addition, PHLX proposes to amend Rule 3305, Order Entry Parameters, to add a paragraph on routing. The new routing paragraph will state that all System orders entered by Participants directing or permitting routing to other market centers shall be routed for potential display and/or execution as set forth in new Rule 3315. In connection with the trading of securities governed by Regulation NMS, System orders shall be routed for potential display and/or execution in compliance with

[3] *See e.g.*, NASDAQ Rule 4758.

[4] PHLX's other affiliate, BX, has also proposed to provide outbound routing services using NES as its routing broker. *See* SR–BX–2011–048.

[5] This is the same as NASDAQ Rule 4751(f)(6).

Regulation NMS. This paragraph is intended to add routing to the rule that governs order types generally.

Second, PHLX proposes to adopt new Rule 3315, Order Routing, to fully spell out how routing will work and to generally track the language of NASDAQ Rule 4758. Paragraph (a) describes the order routing process and states that all routing shall be in compliance with Rule 610 of Regulation NMS under the Act. Specifically, the Exchange proposes to introduce several routing strategies, all of which operate on NASDAQ today. These are PSTG, PSKN, PSCN, PSKP, PTFY, PMOP and PCRT, which are spelled out in proposed Rule 4758(a)(1)(A)(iii)–(vii).[6]

PSTG is a routing option under which orders would check the PSX book, check destinations on the PSTG System routing table,[7] and then return to the PSX book if shares remain unexecuted. After returning to the PSX book, a PSTG order will subsequently route out to another market center if it posts a bid or offer that locks or crosses the PSTG order.[8] PSKN is a form of PSTG in which the entering party instructs the System to bypass any market centers included in the PSTG System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.[9]

PSCN is a routing option under which orders check the PSX book, check destinations on the PSCN System routing table, and then return to the BX book. After returning to the PSX book, a PSCN order will not subsequently route out to another market center if it posts a bid or offer that locks or crosses the PSCN order.[10] PSKP is a form of PSCN in which the entering party instructs the System to bypass any market centers included in the PSCN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.[11]

PTFY is a routing option under which orders check the PSX book for available shares only if instructed by the entering firm prior to routing to destinations on the PTFY System routing table. Thereafter, they return to the PSX book and, like PSCN orders, do not route out again.[12]

PMOP is a routing option under which orders route only to Protected Quotes, but only for displayed size. If shares remain unexecuted after routing, they are posted to the PSX book and do not route out again.[13]

PCRT is a routing option that will route to NASDAQ OMX BX, check the System for available shares and then route to NASDAQ, with any unexecuted shares posting to the Exchange's book or cancelling, depending upon the time-in-force of the order. Shares posted on the Exchange's book are not routed out again.[14] This routing option is similar to CART on NASDAQ, which also routes among the three exchanges in the same order: BX, PSX, NASDAQ.[15] PCRT, like all of the proposed routing strategies is designed to comply with SEC Rule 611 and the other provisions of Regulation NMS.[16]

Paragraph (b) describes the routing broker, Nasdaq Execution Services LLC (''NES'') and the conditions under which NES would operate. Currently, NES does not provide inbound routing to NASDAQ. At this time, PHLX proposes to use NES as its outbound routing facility for cash equities, providing outbound routing from PSX to other market centers, including their affiliates, NASDAQ and BX.[17]

The Exchange, NASDAQ, BX and NES are affiliates. NES is a broker-dealer and member of NASDAQ, BX and the Exchange. Accordingly, the affiliate relationship between PHLX and NES, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[18]

Accordingly, in this proposed rule change, PHLX proposes to permit NES to operate as its routing broker, providing outbound routing to its affiliates, under the following conditions, which are the same as those found in NASDAQ rules:

(1) NES shall route orders to other market centers as directed by PHLX;

(2) NES will not engage in any business other than: (a) As an outbound router for PHLX and (b) any other activities it may engage in as approved by the Commission.[19]

(3) NES shall operate as a facility, as defined in Section 3(a)(2) of the Act, of PHLX.

(4) For purposes of SEC Rule 17d–1, the designated examining authority of NES shall be a self-regulatory organization unaffiliated with PHLX or any of its affiliates.

(5) PHLX shall be responsible for filing with the Commission proposed rule changes related to the operation of, and fees for services provided by, NES and NES shall be subject to exchange non-discrimination requirements.

(6) The books, records, premises, officers, agents, directors and employees of NES as a facility of PHLX shall be deemed to be the books, records, premises, officers, agents, directors and employees of PHLX for purposes of, and subject to oversight pursuant to, the Act. The books and records of NES as a facility of PHLX shall be subject at all times to inspection and copying by the Commission.

(7) Use of NES to route orders to other market centers will be optional. Parties that do not desire to use NES must enter orders into PHLX as immediate-or-cancel orders or any other order-type available through PHLX that is ineligible for routing.

(8) NES shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between PHLX and its facilities (including NES as its routing facility) and any other entity.

These conditions are intended to address the Commission's concerns regarding potential conflicts of interest in instances where a member firm is affiliated with an exchange.

Furthermore, PHLX Rule 985(b)(1)(A) currently provides that the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Exchange Act. Because NES is an Exchange member and PHLX now proposes to engage in the business venture of outbound routing using NES as its routing broker, the Exchange has

[6] These correspond to the following routing strategies on NASDAQ, respectively: STGY, SKNY, SCAN, SKIP, TFTY, MOPP and CART.

[7] Routing tables are explained in proposed Rule 3315(a)(1)(A).

[8] *See* proposed Rule 3315(a)(1)(A)(iii).

[9] *See* proposed Rule 3315(a)(1)(A)(iii).

[10] *See* proposed Rule 3315(a)(1)(A)(iv).

[11] *See* proposed Rule 3315(a)(1)(A)(iv).

[12] *See* proposed Rule 3315(a)(1)(A)(v).

[13] *See* proposed Rule 3315(a)(1)(A)(vi).

[14] *See* proposed Rule 3315(a)(1)(A)(vii).

[15] *See* Securities Exchange Act Release No. 63900 (February 14, 2011), 76 FR 9397 (February 17, 2011) (SR–NASDAQ–2011–026).

[16] 17 CFR 242.611.

[17] In order for PHLX to provide outbound routing services, BX and NASDAQ each must file a proposed rule change to receive inbound orders from their affiliate exchange, PHLX.

[18] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (SE–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100).

[19] Separately, BX has also filed a proposed rule change seeking approval to have NES operate as the routing broker. *See* SR–BX–2011–048.

filed this proposed rule change under Section 19(b) of the Act.

The Exchange also proposes to adopt Rule 3315(c) to address the recently adopted Market Access Rule.[20] In order to comply with Rule 15c3–5,[21] NES proposes to implement, as part of its procedures, certain tests, on both an order-by-order basis and over a short period of time, that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all regulatory requirements that are applicable in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that NES deems to be erroneous or duplicative, would cause the entering member's credit exposure to exceed a preset credit threshold, or are noncompliant with pre-trade regulatory requirements (as defined in the Market Access Rule). To the extent NES determines, based on these procedures, that an order should be rejected, NES may also seek to cancel orders that have already been routed away.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[22] in general, and with Sections 6(b)(5) of the Act,[23] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, because PSX will be better able to serve its customers and compete with other markets by offering optional routing services. The Exchange believes that these services are useful to its participants seeking efficient access to the best markets, consistent with removing impediments to and perfecting the mechanism of a free and open market and a national market system. The Exchange also believes that its rules applicable to the routing broker should promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices by establishing conditions that are intended to address potential conflicts of interest between the Exchange and it affiliated member, consistent with the framework in place at other exchanges using an affiliated routing broker.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6)[25] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–108. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–108 and should be submitted on or before October 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25958 Filed 10–6–11; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[21] 17 CFR 240.15c3–5.

[22] 15 U.S.C. 78f.

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65470; File No. SR–BX–2011–048]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Functionality on the NASDAQ OMX BX Equities Market

October 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 21, 2011, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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

BX is filing with the Commission a proposed rule change to add routing functionality to the NASDAQ OMX BX Equities Market (''System''). Specifically, the Exchange proposes to adopt new Rule 4758, Order Routing, and amend Rule 4751, Definitions, and Rule 4755, Order Entry Parameters, as described below. The Exchange intends to implement the proposal upon notice to its membership.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to attract additional business to and enhance the functionality offered by the Exchange's NASDAQ OMX BX Equities Market by providing optional outbound routing services. Most equities exchanges today provide routing services. The Exchange intends to offer routing strategies materially identical to several currently offered by its affiliate, The NASDAQ Stock Market, LLC (''NASDAQ'').[3] Nasdaq Execution Services LLC is NASDAQ's routing broker and provides all routing functions for NASDAQ. As described in detail below, the Exchange proposes to use Nasdaq Execution Services LLC as its routing broker to provide all of its routing services as well. Specifically, the Exchange proposes to permit Nasdaq Execution Services LLC to route orders from BX to all market centers, as it does for NASDAQ, including to NASDAQ and the NASDAQ OMX PSX facility of NASDAQ OMX PHLX (''PHLX'').[4]

First, BX proposes to amend two existing rules to accommodate routing. Specifically, BX proposes to amend subparagraph (f)(6) of Rule 4751, Definitions, which pertains to Intermarket Sweep Orders (''ISOs''). These are currently defined as limit orders that are designated as ISOs in the manner prescribed by the Exchange and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) of Regulation NMS under the Act. ISOs are immediately executable within the System pursuant to BX Rule 4757. BX proposes to add that ISOs are not eligible for routing as set out in new Rule 4758.[5]

In addition, BX proposes to amend Rule 4755, Order Entry Parameters, to add a paragraph on routing and renumber the rule to more closely track NASDAQ's rule.[6] The new routing paragraph will state that all System orders entered by Participants directing or permitting routing to other market centers shall be routed for potential display and/or execution as set forth in new Rule 4758. In connection with the trading of securities governed by Regulation NMS, System orders shall be routed for potential display and/or execution in compliance with Regulation NMS. This paragraph is intended to add routing to the rule that governs order types generally.

Second, BX proposes to adopt new Rule 4758, Order Routing, to fully spell out how routing will work and to generally track the language of NASDAQ Rule 4758. Paragraph (a) describes the order routing process and states that all routing shall be in compliance with Rule 610 of Regulation NMS under the Act. Specifically, the Exchange proposes to introduce several routing strategies, all of which operate on NASDAQ today. These are BSTG, BSKN, BSCN, BSKP, BTFY, BMOP and BCRT, which are spelled out in proposed Rule 4758(a)(1)(A)(iii)–(vii).[7]

BSTG is a routing option under which orders would check the System, check destinations on the BSTG System routing table,[8] and then return to the System if shares remain unexecuted. After returning to the System, a BSTG order will subsequently route out to another market center if it posts a bid or offer that locks or crosses the BSTG order.[9] BSKN is a form of BSTG in which the entering party instructs the System to bypass any market centers included in the BSTG System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.[10]

BSCN is a routing option under which orders check the System, check destinations on the BSCN System routing table, and then return to the System. After returning to the System, a BSCN order will not subsequently route out to another market center if it posts a bid or offer that locks or crosses the BSCN order.[11] BSKP is a form of BSCN in which the entering party instructs the System to bypass any market centers included in the BSCN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.[12]

BTFY is a routing option under which orders check the System for available shares only if instructed by the entering firm prior to routing to destinations on

[3] *See e.g.,* NASDAQ Rule 4758.

[4] BX's other affiliate, PHLX, has also proposed to provide outbound routing services using NES as its routing broker. *See* SR–Phlx–2011–108.

[5] This is the same as NASDAQ Rule 4751(f)(6).

[6] Specifically, the introductory paragraph in BX Rule 4755(a) will now be subparagraph (a)(1), subparagraph (a)(1)(A), subparagraph (a)(2) will now be subparagraph (a)(1)(B) and subparagraph (a)(3) will now be subparagraph (a)(1)(C), all to track NASDAQ Rule 4755(a).

[7] These correspond to the following routing strategies on NASDAQ, respectively: STGY, SKNY, SCAN, SKIP, TFTY, MOPP and CART.

[8] Routing tables are explained in proposed Rule 4758(a)(1)(A).

[9] *See* proposed Rule 4758(a)(1)(A)(iii).

[10] *See* proposed Rule 4758(a)(1)(A)(iii).

[11] *See* proposed Rule 4758(a)(1)(A)(iv).

[12] *See* proposed Rule 4758(a)(1)(A)(iv).

the BTFY System routing table. Thereafter, they return to the System and, like BSCN orders, do not route out again.[13]

BMOP is a routing option under which orders route only to Protected Quotes, but only for displayed size. If shares remain unexecuted after routing, they are posted to the System and do not route out again.[14]

BCRT is a routing option that will check the Exchange's System and then route an order to PSX and NASDAQ, with any unexecuted shares posting to the Exchange's book or cancelling, depending upon the time-in-force of the order. Shares posted on the Exchange's book are not routed out again.[15] This routing option is similar to CART on NASDAQ, which also routes among the three exchanges in the same order: BX, PSX, NASDAQ.[16] BCRT, like all of the proposed routing strategies is designed to comply with SEC Rule 611 and the other provisions of Regulation NMS.[17]

Paragraph (b) describes the routing broker, Nasdaq Execution Services LLC (''NES'') and the conditions under which NES would operate. Currently, NES does not provide inbound routing to NASDAQ. At this time, BX proposes to use NES as its outbound routing facility for cash equities, providing outbound routing from BX to other market centers, including their affiliates, NASDAQ and PHLX.[18]

The Exchange, NASDAQ, NASDAQ OMX PHLX and NES are affiliates. NES is a broker-dealer and member of NASDAQ, NASDAQ OMX PHLX and the Exchange. Accordingly, the affiliate relationship between BX and NES, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[19]

Accordingly, in this proposed rule change, BX proposes to permit NES to operate as its routing broker, providing outbound routing to its affiliates, under the following conditions, which are the same as those found in NASDAQ rules:

(1) NES shall route orders to other market centers as directed by BX;

(2) NES will not engage in any business other than: (a) As an outbound router for BX and (b) any other activities it may engage in as approved by the Commission.[20]

(3) NES shall operate as a facility, as defined in Section 3(a)(2) of the Act, of BX.

(4) For purposes of SEC Rule 17d–1, the designated examining authority of NES shall be a self-regulatory organization unaffiliated with BX or any of its affiliates.

(5) BX shall be responsible for filing with the Commission proposed rule changes related to the operation of, and fees for services provided by, NES and NES shall be subject to exchange non-discrimination requirements.

(6) The books, records, premises, officers, agents, directors and employees of NES as a facility of BX shall be deemed to be the books, records, premises, officers, agents, directors and employees of BX for purposes of, and subject to oversight pursuant to, the Act. The books and records of NES as a facility of BX shall be subject at all times to inspection and copying by the Commission.

(7) Use of NES to route orders to other market centers will be optional. Parties that do not desire to use NES must enter orders into BX as immediate-or-cancel orders or any other order-type available through BX that is ineligible for routing.

(8) NES shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between BX and its facilities (including NES as its routing facility) and any other entity.

These conditions are intended to address the Commission's concerns regarding potential conflicts of interest in instances where a member firm is affiliated with an exchange.

Furthermore, BX Rule 2140(a)(1) currently provides that the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act. Because NES is an Exchange member and BX now proposes to engage in the business venture of outbound routing using NES as its routing broker, the Exchange has filed this proposed rule change under Section 19(b) of the Act.

The Exchange also proposes to adopt Rule 4758(c) to address the recently adopted Market Access Rule.[21] In order to comply with Rule 15c3–5,[22] NES proposes to implement, as part of its procedures, certain tests, on both an order-by-order basis and over a short period of time, that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all regulatory requirements that are applicable in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that NES deems to be erroneous or duplicative, would cause the entering member's credit exposure to exceed a preset credit threshold, or are noncompliant with pre-trade regulatory requirements (as defined in the Market Access Rule). To the extent NES determines, based on these procedures, that an order should be rejected, NES may also seek to cancel orders that have already been routed away.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[23] in general, and with Sections 6(b)(5) of the Act,[24] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, because BX will be better able to serve its customers and compete with other markets by offering optional routing services. The Exchange believes that these services are useful to its participants seeking efficient access to the best markets, consistent with removing impediments to and

[13] *See* proposed Rule 4758(a)(1)(A)(v).

[14] *See* proposed Rule 4758(a)(1)(A)(vi).

[15] *See* proposed Rule 4758(a)(1)(A)(vii).

[16] *See* Securities Exchange Act Release no. 63900 (February 14, 2011), 76 FR 9397 (February 17, 2011) (SR–NASDAQ–2011–026).

[17] 17 CFR 242.611.

[18] In order for BX to provide outbound routing services, PHLX and NASDAQ each must file a proposed rule change to receive inbound orders from their affiliate exchange, BX.

[19] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (SR–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100).

[20] PHLX has also filed a proposed rule change seeking approval to have NES operate as the outbound routing broker for its PSX facility. *See* SR–Phlx–2011–108.

[21] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010.

[22] 17 CFR 240.15c3–5.

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

perfecting the mechanism of a free and open market and a national market system. The Exchange also believes that its rules applicable to the routing broker should promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices by establishing conditions that are intended to address potential conflicts of interest between the Exchange and it affiliated member, consistent with the framework in place at other exchanges using an affiliated routing broker.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) [26] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–048 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–2011–048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–048 and should be submitted on or before October 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25959 Filed 10–6–11; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65471; File No. SR–C2–2011–026]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the C2 Fees Schedule

October 3, 2011.

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 28, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] 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 the Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fees Schedule as it relates to the SPXPM. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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

On September 2, 2011, the Commission approved a proposed rule change filed by the Exchange to permit on a pilot basis the listing and trading on C2 of Standard & Poor's 500 Index (''S&P 500'') options with third-Friday-of-the-month (''Expiration Friday'') expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities (''SPXPM'').[5] The Exchange now proposes to adopt fees associated with the anticipated trading of SPXPM.

The Exchange proposes adopting standard transaction fees for SPXPM that are comparable to, if not effectively lower than, similar products available in the marketplace. The specific transaction fees proposed are as follows: Public customer transactions would be charged $0.44 per contract; voluntary professional, professional customer, and broker-dealer transactions would be charged $0.40 per contract;[6] OCC Clearing Trading Permit Holder Firm (''Firm'') proprietary transactions would be charged $0.25 per contract; and C2 Market-Maker transactions would be charged $0.17 per contract. These fee rates are comparable to rates in place on the Chicago Board Options Exchange, Incorporated (''CBOE'') for executions in SPX (the a.m.-settled S&P 500 index options contract). Further, the Exchange notes that because the contract size of SPXPM is ten times larger than the contract size of SPY ETF options (options on exchange traded funds based on the S&P 500 index), transaction fees for SPXPM provide significant cost savings to investors when compared to SPY options where taker fees in the smaller SPY option contract can run as high as $0.45 per contract for customers (see NYSE Arca options fee schedule).

Like with SPX traded on CBOE, a customer large trade discount would also apply to SPXPM traded on C2. Thus, transaction fees applicable to a customer order in SPXPM would be capped at 10,000 contracts per order (this cap only applies to public customer orders). For complex orders, the total contracts of an order (all legs) would be counted for purposes of calculating the fee cap. To qualify for the discount, the entire order quantity would need to be tied to a single order ID within the CBOEdirect[7] system or in the front end system used to transmit the order, provided the Exchange is granted access to effectively audit such front end system. Thus, the order would need to be entered in its entirety into the Exchange's system or into the applicable front end system so that the Exchange could clearly identify the total size of the order. For an order entered via a PULSe Workstation[8] or another front end system, to take advantage of the cap, a customer large trade discount request would need to be submitted to the Exchange within three business days of the transaction and would need to identify all necessary information, including the order ID and related details. The Exchange is requiring supporting information in order to ensure that the originating order was indeed for a size greater than 10,000 contracts.

An aim of the customer large trade discount is to help attract customer users from the over-the-counter (OTC) market. The Exchange believes OTC S&P 500 transactions are typically large in size. Establishing the proposed cap at 10,000 contracts is the Exchange's attempt at further creating an appealing alternative for OTC users as well as other public customer users who effect large trades in exchange-listed S&P 500 derivatives.

The Exchange also proposes to adopt a $0.10 per contract index license surcharge fee for executions in SPXPM in order to offset costs incurred by the Exchange in connection with its license with Standard and Poors. It is not uncommon for exchanges to license indexes from third parties for use in connection with derivative products (including exchange traded funds). An index license surcharge fee in a product helps offset the costs associated with the license. This fee would apply to all non-public customer transactions (*i.e.,* C2 and non-Permit Holder market-maker, Clearing Participant and broker-dealer), including voluntary professionals. The proposed fee is the same as the index license surcharge fee in place at CBOE with respect to executions in SPX. Not applying the fee to public customer executions helps lower costs associated with public customer transactions. This is appropriate because not assessing the licensing surcharge fee to public customers offsets the higher transaction rates applicable to public customer executions. Additionally, the Exchange believes that waiver of the license surcharge fee will also help attract customer users from the OTC market.

With regard to the proposed transaction fees, the Exchange notes that while it appears that public customer transactions are charged a higher rate than all other user types, because the index license surcharge fee would not be applied to public customer executions, public customers would actually be charged a lower total amount per contract than all other origin codes except the C2 Market-Maker and OCC Clearing TPH Proprietary (Firm) categories. Further, as mentioned above, only public customers would be eligible for the large trade discount. A lower transaction fee for C2 Market-Makers rewards dedicated liquidity provision and is consistent with index fee structures in place on other exchanges (*e.g.* on CBOE). A lower execution fee for C2 Market-Makers is justified and not unfairly discriminatory because C2 Market-Makers have obligations to the market that other market participants do not, and those obligations act to the benefit of all participants and to overall market quality on C2. The Exchange believes it is not unfairly discriminatory to reward C2 Market-Makers with lower transaction fees in recognition of their obligations.

The proposed Firm rate generally corresponds to a comparable fee in place at CBOE. The Exchange believes the proposed Firm rate is appropriate because it provides an incentive for OCC Clearing Trading Permit Holders to contribute capital to facilitate execution of customer orders, which in turn provides a deeper pool of liquidity on C2 which benefits the C2 market and its participants.

The Exchange also proposes to adopt a new SPXPM Tier Appointment fee for Market-Maker Permit Holders that obtain an appointment in SPXPM. In addition to the current Market-Maker Permit access fee of $5,000, a SPXPM Tier Appointment of $4,000 would also be charged to any Market-Maker Permit holder that has an appointment (registration) in SPXPM at any time during a calendar month. The Exchange notes that, when combined, the $5,000 permit fee and $4,000 SPXPM Tier Appointment fees are comparable to the total Market Maker permit fee and SPX Tier Appointment costs on CBOE

[5] See Securities Exchange Act Release No. 34–65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008).

[6] ''Professional'' and ''Voluntary Professional'' participant-types are defined in C2 Rule 1.1.

[7] CBOEdirect is the technology platform that drives the C2 trade engine.

[8] The PULSe Workstation is the exchange-provided front-end order entry system.

(generally $6,000 and $3,000). The SPXPM Tier Appointment fee would be waived through November 2011. Even though it will be waived through November 2011, establishing the fee prior to the launch of SPXPM will provide an incentive for market making firms to seek an SPXPM market-making permit while also alerting prospective Market-Makers that a SPXPM Tier Appointment fee will be charged in the future.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[9] in general, and furthers the objectives of Section 6(b)(4)[10] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Permit Holders and other persons using Exchange facilities.

The Exchange believes it is equitable to assess fees for transactions in P.M.-settled S&P 500 Index Options, just as the Exchange assesses fees for transactions in other option classes. The Exchange also believes it is reasonable to charge different fee amounts to different user types in the manner proposed because the proposed fees are consistent with the price differentiation that exists today at other options exchanges (for example, the proposed fees are comparable with fees for other index option products traded on CBOE -including index options on the S&P 500 index). Additionally, the Exchange believes that the establishment of a $0.17 per contract execution fee for C2 Market-Makers (as previously noted, an additional $0.10 per contract licensing surcharge fee would also be applied to each C2 Market-Maker execution) is equitable and not unfairly discriminatory because C2 Market-Makers have obligations to the market that other market participants do not, and those obligations act to the benefit of all participants and to overall market quality on C2. Thus, the establishment of the proposed lower transaction fee for C2 Market-Makers rewards dedicated liquidity provision that is important to the C2 marketplace. Similarly, the establishment of a $0.25 per contract execution fee for OCC Clearing TPH Proprietary users (as previously noted, an additional $0.10 per contract licensing surcharge fee would also be applied to each OCC Clearing TPH Proprietary execution) is reasonable because it corresponds to a comparable fee in place at CBOE for executions in SPX. The Exchange further believes that the proposed OCC Clearing TPH Proprietary rate is equitable and not unfairly discriminatory because OCC Clearing Trading Permit Holders contribute significant capital to facilitate execution of customer orders, which in turn provides a deeper pool of liquidity on C2 that benefits the C2 market and its participants. The Exchange also believes the proposed transaction fees are reasonable and equitable because the proposed transaction fees for SPXPM would provide significant cost savings to investors when compared to SPY options where taker fees in the smaller SPY contract can run as high as $0.45 per contract for customers (see NYSE Arca options fee schedule). The customer large trade discount program is reasonable because it is substantially similar to a program in place on CBOE and the program will help attract business from the OTC market to the listed exchange marketplace, consistent with the objectives of the Dodd-Frank legislation. It is not unfairly discriminatory because it benefits the public customer participant type which already incurs the highest transaction fee rate.

The proposed index license surcharge fee is reasonable and equitable because it corresponds to an identical fee in place on CBOE for executions in SPX and because it helps the Exchange offset costs incurred by the Exchange in connection with its license with Standard and Poors. Further, the proposed index license surcharge fee is not unfairly discriminatory because it applies evenly to all market participants except public customers and not assessing the license surcharge fee to public customers is appropriate because of the higher transaction rates applicable to public customer executions.

The proposed SPXPM Tier Appointment cost is reasonable, equitable and not unfairly discriminatory because it applies to all C2 SPXPM Market-Makers equally and because it, when combined with the C2 Market-Maker Permit fee, costs the same as the total cost of CBOE's Market-Maker Permit fee plus CBOE's Tier Appointment fee for SPX.

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 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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–026. This file number should be included on the subject line if e-mail 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/s sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2011–026, and should be submitted on or before October 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25960 Filed 10–6–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7636]

30-Day Notice of Proposed Information Collection: DS–157, Supplemental Nonimmigrant Visa Form, OMB Control Number 1405–0134

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Supplemental Nonimmigrant Visa Application. *OMB Control Number:* 1405–0134.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–157.
- *Respondents:* Nonimmigrant visa applicants legally required to provide additional security and background information.
- *Estimated Number of Respondents:* 150,000.
- *Estimated Number of Responses:* 150,000.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 150,000.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from October 7, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stefanie Claus of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Any applicant legally required to provide additional security and background information who does not use the DS–160 will use the DS–157 to apply for a nonimmigrant visa. While the DS–160 includes most questions listed on the DS–157, the DS–157 will be required for certain applicants in conjunction with the DS–156 in limited circumstances.

Methodology

The DS–157 is completed by applicants online or, in exceptional circumstances, in hard copy at the time of the interview.

Dated: August 30, 2011.

Edward J. Ramotowski,

Deputy Assistant Secretary, Acting Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–25745 Filed 10–6–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7638]

Designation of Ibrahim 'Awwad Ibrahim 'Ali al-Badri, Also Known as Dr. Ibrahim 'Awwad Ibrahim 'Ali al-Badri, Also Known as Ibrahim 'Awad Ibrahim al-Badri al-Samarrai, Also Known as Ibrahim Awwad Ibrahim al-Samarra'I, Also Known as Dr. Ibrahim Awwad Ibrahim al-Samarra'I, Also Known as Abu Du'a, Also Known as Dr. Ibrahim, Also Known as Abu Bakr al-Baghdadi al-Husayni al-Quraishi, Also Known as Abu Bakr al-Baghdadi al-Husseini al-Qurashi, Also Known as Abu Bakr al-Husayni al-Baghdadi, Also Known as Abu Bakr al-Baghdadi, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Ibrahim 'Awwad Ibrahim 'Ali al-Badri, also known as Dr. Ibrahim 'Awwad Ibrahim 'Ali al-Badri, also known as Ibrahim 'Awad Ibrahim al-Badri al-Samarrai, also known as Ibrahim Awwad Ibrahim al-Samarra'i, also known as Dr. Ibrahim Awwad Ibrahim al-Samarra'i, also known as Abu Du'a, also known as Dr. Ibrahim, also known as Abu Bakr al-Baghdadi al-Husayni al-Quraishi, also known as Abu Bakr al-Baghdadi al-Husseini al-Qurashi, also known as Abu Bakr al-Husayni al-Baghdadi, also known as Abu Bakr al-Baghdadi, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in Section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination

who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 18, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–26022 Filed 10–6–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Extension of Public Scoping Comment Period for the Air Tour Management Plan Program at Golden Gate National Recreation Area, San Francisco Maritime National Historical Park and Point Reyes National Seashore

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension of public scoping comment period for the Air Tour Management Plan Program at Golden Gate National Recreation Area, San Francisco Maritime National Historical Park and Point Reyes National Seashore.

This notice extends the public scoping comment period for the Air Tour Management Plan (ATMP) for Golden Gate National Recreation Area (GGNRA) and Point Reyes National Seashore (the Seashore) that was published in the **Federal Register** on July 28, 2011 (76 FR 45312). The original date that the comment period would end was September 28, 2011. During that time the National Park Service (NPS) Planning, Environment and Public Comment Web site (PEPC) experienced some technical complications that made it difficult for everyone's comments to be captured on the system. That public scoping comment period date will now be extended until October 21, 2011.

The FAA, with NPS as a cooperating agency, has initiated development of ATMPs for GGNRA and the Seashore. The ATMP for GGNRA will include Muir Woods National Monument and Fort Point National Historic Site, both directly managed by GGNRA, and the San Francisco Maritime National Historical Park (SF Maritime NHP), an independently managed national park unit adjacent to GGNRA.

The ATMPs are being developed pursuant to the National Parks Air Tour Management Act (NPATMA) of 2000 (Pub. L. 106–181) and it's implementing regulations (14 Code of Federal Regulation [CFR] part 136, Subpart B, *National Parks Air Tour Management*). Per section 40128(b)(1)(B) of NPATMA, the objective of an ATMP shall be to develop acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences and tribal lands within or abutting GGNRA and the Seashore. It should be noted that an ATMP has no authorization over other non-air-tour operations such as military and general aviation. In compliance with the National Environmental Policy Act of 1969 (NEPA) and FAA Order 1050.1E, an Environmental Assessment (EA) is being prepared.

The FAA has granted Interim Operating Authority (IOA) to two commercial air tour operators to conduct air tours over GGNRA, SF Maritime NHP, and the Seashore.

The FAA and NPS are now inviting the public, agencies, tribes, and other interested parties to provide comments, suggestions, and input on the scope of issues and range of alternatives to be addressed in the environmental process.

DATES: By this notice, the FAA is extending the public scoping comment period for the EA for the individual ATMPs at GGNRA and SF Maritime NHP, and the Seashore. The original date that the comment period would end was September 28, 2011. That date will now be extended until October 21, 2011.

FOR FURTHER INFORMATION CONTACT: Keith Lusk—Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3808. Street address: 15000 Aviation Boulevard, Lawndale, California 90261. Written comments on the scope of the EA should be submitted electronically via the electronic public comment form on the NPS Planning, Environment and Public Comment Web site at: *http://parkplanning.nps.gov/BayArea_ATMP* or sent to the mailing address above.

SUPPLEMENTARY INFORMATION: A public scoping packet that describes the project in greater detail is available at:

- *http://parkplanning.nps.gov/BayArea_ATMP.*
- *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/.*

Notice Regarding FOIA: Individuals may request that their name and/or address be withheld from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comment. Commentators using the Web site can make such a request by checking the box ''keep my contact information private.'' Such requests will be honored to the extent allowable by law, but you should be aware that pursuant to the Freedom of Information Act, your name and address may be disclosed. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Issued in Hawthorne, CA on September 29, 2011.

Larry Tonish,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2011–25906 Filed 10–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Local Arterial in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by Caltrans.

SUMMARY: This notice announces actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project—Grand Avenue Widening Project, City of Santa Ana, in the County of Orange, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, Caltrans is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 4, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Charles Baker, Senior Environmental Planner, California Department of Transportation, 3347 Michelson Drive, Suite 100, Irvine, CA 92612–1692; office hours Monday through Friday, 8 a.m. to 5 p.m., (949) 724–2552; and *Charles_Baker@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that Caltrans, pursuant to

its assigned responsibilities under 23 U.S.C. 327 has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by approving the following highway project in the State of California: The project proposes to widen a segment of Grand Avenue between First Street and Fourth Street in the City of Santa Ana from two to three lanes of through travel and to provide left-turn and right-turn lanes at major intersections, and install a raised landscaped center median. The actions by Caltrans, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) and Finding of No Significant Impact (FONSI) for the project, both approved on September 1, 2011, and in other documents in Caltrans' project records. The FEA and other project records are available by contacting the California Department of Transportation at the address provided above. This notice applies to all agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 (4f) [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended (106) [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 2000(d)–2000(d)(1)].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Rivers and Harbors Act of 1899 (RHA) [33 U.S.C. 401–406]; Wetlands Mitigation (Sections 103 and 133) [23 U.S.C. 103(b)(6)(M) and 133(b)(11)].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: October 3, 2011.

Jacob Waclaw,

Senior Transportation Engineer, Local Agency Programs, Federal Highway Administration, Los Angeles, CA.

[FR Doc. 2011–25982 Filed 10–6–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Series of Public Subcommittee Meetings

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

ACTION: Notice of meeting.

SUMMARY: The FMCSA's Motor Carrier Safety Advisory Committee (MCSAC) will hold working group and subcommittee meetings on Monday–Thursday, October 24–27, 2011. The meetings will be open to the public for their duration. During the first two days, Monday–Tuesday, October 24–25, 2011, a working group of the subcommittee will discuss with FMCSA technical specifications related to wireless communications protocols that may be needed to ensure successful and secure transmission of data from electronic on-board recorders (EOBRs) to enforcement officials. The next two days, Wednesday–Thursday, October 26–27, 2011, will be devoted to a meeting of the full MCSAC EOBR subcommittee. The working group and subcommittee will discuss technical issues the full MCSAC should consider in providing input to the Agency as it develops functional specifications for EOBRs used in lieu of handwritten records of duty status (RODS).

Time and Dates: The meetings will be held Monday–Thursday, October 24–27, 2011, from 8:30 am to 5 pm, E.T. at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA, 22202, in meeting rooms Crystal V and VI.

Matters To Be Considered: The subcommittee will continue its review of the functional specifications for EOBRs published by FMCSA as part of its final rule concerning EOBRs on April 5, 2010 (75 FR 17208), but subsequently vacated by the United States Court of Appeals for the Seventh Circuit (Seventh Circuit), and will provide suggestions to address stakeholder concerns about new specifications.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Adviser to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish a Motor Carrier Safety Advisory Committee. The committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations and operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App 2).

EOBRs

On April 5, 2010, FMCSA issued a final rule that required the use of EOBRs by motor carriers with significant hours-of-service violations, as determined through an on-site enforcement intervention (75 FR 17208). The rule also set forth new technical requirements or functional specifications for EOBRs used in lieu of handwritten RODS. The compliance date for the rule was June 4, 2012.

The Owner-Operator Independent Drivers Association (OOIDA) filed a petition for judicial review of the EOBR final rule with the Seventh Circuit. On August 26, 2011, the Seventh Circuit vacated the final rule because the Agency failed to consider a statutory mandate to ''ensure that [EOBRs] are not used to harass vehicle operators'' (49 U.S.C. 31137(a)). [*Owner-Operator Indep. Drivers Ass'n., et al.* v. *Fed. Motor Carrier Safety Admin.,* No. 10–2340 (7th Cir. 2011).]

The Agency will not appeal the court's decision and will issue a final rule at a later date to remove all regulatory text from the Code of Federal Regulations related to the vacated April 5, 2010, final rule. However, the MCSAC subcommittee will continue its review of the technical specifications

pertaining to EOBRs published on April 5, 2010 (75 FR 17208).

MCSAC Subcommittee (EOBR Technical Issues)

During the MCSAC's June 20–22, 2011, public meeting, FMCSA tasked the group to review the functional specifications included in the April 5, 2010, final rule and provide suggestions to address stakeholder concerns about the technical requirements for EOBRs. A copy of the task statement and all MCSAC materials related to the assignment are posted at *http://mcsac.fmcsa.dot.gov.* The Agency assigned this task to the MCSAC after making a preliminary determination that additional information would be needed to ensure that roadside inspection officials are able to obtain and/or retrieve EOBR data in order to assess drivers' compliance with the HOS regulations. After the 2010 final rule was published, stakeholders in the CMV safety enforcement and EOBR supplier communities urged that certain requirements of the rule be revisited. Some communications methods that were presumed to be viable when the rule was developed appear less appropriate now as technology and government information technology security standards have evolved.

The MCSAC established a subcommittee to explore these complex issues. The subcommittee's meetings were announced in the **Federal Register** and open to all interested parties [(76 FR 38268), June 29, 2011)]. Following its October 27, 2011 session, the subcommittee will submit its report to the full MCSAC. The MCSAC will review and discuss the subcommittee's report at MCSAC's December 2011 public meeting and submit to the Agency its recommendations concerning functional specifications. The Agency will consider the MCSAC report in any future rulemaking to re-establish functional specifications for EOBRs.

II. Meeting Participation

The meetings will be open to the public for their duration. Public comments may be heard beginning at 4:30 pm on each meeting day.

You may submit written comments identified by Docket ID Number FMCSA–2006–26367 by Friday, October 14, 2011, for the October 24–27 meeting using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday except Federal holidays.

Fax: 202–493–2251.

Do not submit the same comment by more than one method. To allow effective public participation before the comment period deadline, FMCSA encourages use of the Web site listed above (*Federal eRulemaking Portal: http://www.regulations.gov*).

III. Services for Individuals With Disabilities

For assistance with services for individuals with disabilities or to request special assistance, please send your request to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or e-mail your request to *shannon.watson@dot.gov* by Friday, October 14.

Issued on: September 30, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–25916 Filed 10–6–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1087X]

Grenada Railway LLC—Abandonment Exemption—in Grenada, Montgomery, Carroll, Holmes, Yazoo and Madison Counties, MS

On September 20, 2011, Grenada Railway LLC (GRYR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon the southern segment of its line of railroad between milepost 622.5 near Grenada, Miss., and milepost 703.8 near Canton, Miss., a distance of 81.3 miles, in Grenada, Montgomery, Carroll, Holmes, Yazoo and Madison Counties, Miss.[1] The line traverses United States Postal Service Zip Codes 38960, 38926, 38925, 38967, 39176, 39192, 39063, 39079, 39146, and 39179, and includes the stations of Tie Plant, Elliott, Duck Hill, Eskridge, Winona, Vaiden, West, Durant, Goodman, Pickens, and Vaughan.

According to GRYR, it believes that the line does not contain Federally granted rights-of-way. Any documentation in GRYR's possession regarding the line will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 6, 2012.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 27, 2011. Each trail request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1087X, and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW. (8th Floor), Washington, DC 20036. Replies to the petition are due on or before October 27, 2011.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact

[1] GRYR acquired this line from the Illinois Central Railroad Company in *Grenada Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company and Waterloo Railway Company,* Docket No. FD 35247 (STB served May 29, 2009).

OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 3, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–25970 Filed 10–6–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35545]

Finger Lakes Railway Corp.—Acquisition and Operation Exemption—CSX Transportation, Inc.

Finger Lakes Railway Corp. (FGLK), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from CSX Transportation, Inc. (CSXT) and to operate a 0.73-mile line of railroad extending between milepost QCS 2.88 and milepost QCS 3.61 near Solvay, Onondaga County, N.Y., and lease from CSXT the underlying real property.[1]

FGLK certifies that its projected annual revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. However, because its projected annual revenues will exceed $5 million, FGLK also has certified to the Board that that it has complied with the employee notice requirements of 49 CFR 1150.42(e). Pursuant to that provision, the exemption may not become effective until 60 days from the August 25, 2011 date of certification to the Board, which would be October 24, 2011. Thus, FGLK may consummate the transaction and commence operating the line on or after that date.

In its notice, FGLK states that it will continue to interchange traffic with CSXT. FGLK further states that there are no interchange commitments with respect to its existing interchange with CSXT, and that no interchange commitments will be required as part of the instant transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than October 17, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35545, 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 Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 3, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–25892 Filed 10–6–11; 8:45 am]

BILLING CODE 4915–01–P

[1] FGLK states that it is also acquiring 2.17 miles of track in the Solvay Yard, which is adjacent to the subject rail line, but further states that acquisition of this yard track does not require Board authorization.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Submission for OMB Review

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning a renewal of an existing collection titled ''Electronic Operations.'' The OCC also is giving notice that the collection has been submitted to OMB for review.

DATES: You should submit written comments by: November 7, 2011.

ADDRESSES: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0301, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0301, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Ira L. Mills, (202) 874–6055, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is requesting comment on the following information collection:

Title: Electronic Operations.

OMB Control No.: 1557–0301.

Description: On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act). As part of the comprehensive package of financial regulatory reform measures enacted, Title III of the Dodd-Frank Act provides for the transfer of the powers, authorities, rights and duties of the Office of Thrift Supervision (OTS) to other banking agencies, including the OCC, as of the transfer date, July 21, 2011. The Dodd-Frank Act also abolishes the OTS ninety days after the transfer date. As a result of these transfers under the Dodd-Frank Act, the OCC is transferring the burden from OTS's Electronic Operations collection (OMB Control Nos. 1550–0095) to this collection.

This information collection facilitates the OCC's ability to identify industry technology trends and better understand emerging technologies. The information is collected transactionally, and is used to ensure that safety and soundness requirements are being met.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Number of Respondents: 9.
Total Annual Responses: 9.
Frequency of Response: On occasion.
Total Annual Burden Hours: 18.

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. On July 19, 2011, the OTS issued a notice with a 60-day comment period (76 FR 42768). No comments were received. Comments continue to be 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 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.

Dated: October 3, 2011.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 2011–26012 Filed 10–6–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8820

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 8820, Orphan Drug Credit.

DATES: Written comments should be received on or before December 6, 2011 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: Orphan Drug Credit.
OMB Number: 1545–1505.
Form Number: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act. 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: Business or other for-profit organizations.

Estimated Number of Respondents: 67.

Estimated Time per Respondent: 3 hours, 58 minutes.

Estimated Total Annual Burden Hours: 266.

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, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–25948 Filed 10–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8693

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 8693, Low-Income Housing Credit Disposition Bond.

DATES: Written comments should be received on or before December 6, 2011, 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) 622–3179, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Disposition Bond.
OMB Number: 1545–1029.
Form Number: 8693.

Abstract: Section 42(j)(6) of the Internal Revenue Code states that when a taxpayer disposes of a building (or an interest therein) on which the low-income housing credit has been claimed, the taxpayer may post a bond

in lieu of paying the recapture tax if the building continues to be operated as a qualified low-income building for the remainder of the compliance period. For 8693 is used to post a bond under Code section 42(j)(6) to avoid recapture of the low-income housing credit.

Current Actions: There are no changes being made to Form 8693 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 667.

Estimated Time per Respondent: 5 hours, 23 minutes.

Estimated Total Annual Burden Hours: 3,589.

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, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–25951 Filed 10–6–11; 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 treatment of distributions to foreign persons.

DATES: Written comments should be received on or before December 6, 2011 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 regulation 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: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

OMB Number: 1545–1487.

Regulation Project Number: REG–209827–96 and REG–111672–99.

Abstract: Sections 367(e)(1) and 367(e)(2) provide for gain recognition on certain transfers to foreign persons under sections 355 and 332. Section 6038B(a) requires U.S. persons transferring property to foreign persons in exchanges described in sections 332 and 355 to furnish information regarding such transfers. This information is used by the Internal Revenue Service to verify whether a taxpayer is entitled to an exemption from income tax.

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.

Estimated Number of Respondents: 414.

Estimated Time per Respondent: 5 hours, 58 minutes.

Estimated Total Annual Burden Hours: 2,471.

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, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–25949 Filed 10–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–F

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–F, U.S. Income Tax Return of a Foreign Corporation.

DATES: Written comments should be received on or before December 6, 2011 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 of a Foreign Corporation.

OMB Number: 1545–0126.

Form Number: 1120–F.

Abstract: Form 1120–F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120–F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.

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: Business or other for-profit organizations.

Estimated Number of Respondents: 127,250.

Estimated Time per Respondent: 68 hours, 21 minutes.

Estimated Total Annual Burden Hours: 8,697,023.

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, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–25950 Filed 10–6–11; 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; 12-Month Finding on a Petition To List the Black-footed Albatross as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2007–0004; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Black-footed Albatross as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the black-footed albatross (*Phoebastria nigripes*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). The petitioners provided three listing options for consideration by the Service: Listing the black-footed albatross throughout its range; listing the Hawaiian Islands breeding population of the black-footed albatross as a Distinct Population Segment (DPS); or listing the Japanese Islands breeding population of the black-footed albatross as a DPS. After a review of the best available scientific and commercial information, we find that listing the black-footed albatross rangewide is not warranted at this time. We find that the Hawaiian Islands breeding population and the Japanese Islands breeding population are separate DPSs, as defined by DPS policy. However, we further find that neither the Hawaiian Islands DPS nor the Japanese Islands DPS of the black-footed albatross warrants listing at this time. We ask the public to submit to us any new information that becomes available concerning the threats to the black-footed albatross or its habitat at any time.

DATES: The finding announced in this document was made on October 7, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R1–ES–2007–0004, and *http://www.fws.gov/pacificislands/.* Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, Hawaii 96850. Please submit any new information or materials concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**); by telephone at 808–792–9400; or by facsimile at 808–792–9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1532 *et seq.*) requires us to make a finding within 12 months of the date of receipt of any petition to revise the Lists of Endangered and Threatened Wildlife and Plants, provided the petition contains substantial scientific and commercial information that listing may be warranted. In this finding, we will determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, requiring that a subsequent finding be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

On October 1, 2004, we received a petition dated September 28, 2004, from Earthjustice on behalf of the Turtle Island Restoration Network and the Center for Biological Diversity, requesting that we list the black-footed albatross as a threatened or endangered species throughout its range, with critical habitat, or that we list either or both the Hawaiian breeding population and/or the Japanese breeding population as a DPS, and that we designate critical habitat concurrently with listing. Because the determination of critical habitat is not a petitionable action under the Act, we did not consider the designation of critical habitat in this finding. The petition included supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, potential causes of decline, and active imminent threats. In our December 3, 2004, letter to the petitioner we acknowledged the petition and provided our determination that emergency listing was not warranted. We also explained that, due to a significant number of listing rules due in 2005 under court-approved settlement agreements, we had insufficient resources to initiate a 90-day finding at that time.

In 2007 we received funding and initiated the 90-day finding. On October 9, 2007, we published a 90-day petition-finding (72 FR 57278), in which we concluded the petition presented substantial scientific or commercial information indicating listing of the black-footed albatross may be warranted, and we initiated a status review. In that notice, we announced the opening of a 60-day information collection period and invited the public to submit to us any pertinent information concerning the status of or threats to this species. We received information from 14 parties in response to this notice. We also consulted with recognized species experts and other Federal and State agencies. On August 26, 2009, we announced the reopening of the information collection period (74 FR 43092) in response to the U.S. Geological Survey-Biological Resources Discipline (USGS–BRD) publication of the *Status Assessment of the Laysan and Black-Footed Albatrosses, North Pacific Ocean, 1923–2005* (Arata *et al.* 2009, entire). One additional party provided comments during the second information collection period. This notice constitutes the 12-month finding on the petition to list the black-footed albatross as endangered or threatened with critical habitat.

Outline of This Notice

In this notice, we first provide background information on the biology of the black-footed albatross. Next we analyze the threat factors facing the black-footed albatross throughout its range to determine if listing under the Act is warranted. This analysis is called a ''Five Factor Analysis'' because it addresses the five factors listed in section 4(a)(1) of the Act that are used in determining whether a species meets the definition of an endangered or a threatened species under the Act. For each factor, we first determine whether any stressors, or risk factors, appear to be negatively affecting black-footed albatrosses anywhere within the species' range. If we determine they are, then we evaluate whether each of these risk factors, either singly or in combination, is resulting in population-level effects. Defining a stressor to be a threat to the species does not

necessarily mean the species meets the definition of endangered or threatened. Virtually all species face some degree of threat from either natural or anthropogenic sources. Rather, for the purposes of the Act, we must consider each of the stressors and identified threats, both individually and cumulatively, and make a determination with respect to whether the species is endangered or threatened according to the statutory standard. That is, we must make a determination as to whether the threats are impacting the species to such a degree that the species is currently in danger of extinction (endangered), or likely to become so within the foreseeable future (threatened), throughout all or a significant portion of its range. Further details on this evaluation are provided below in the section *Summary of Factors Affecting the Species.*

Species Information

The black-footed albatross is a migratory, open-ocean species whose current range encompasses the seas from north of the Hawaiian Islands to the Bering Sea (15° N to 60° N), eastward to the western coast of North America, and west to the northeastern coast of Japan (118° E to 112° W) (Figure 1) (Awkerman *et al.* 2008, p. 4; Fischer *et al.* 2009, p. 757).

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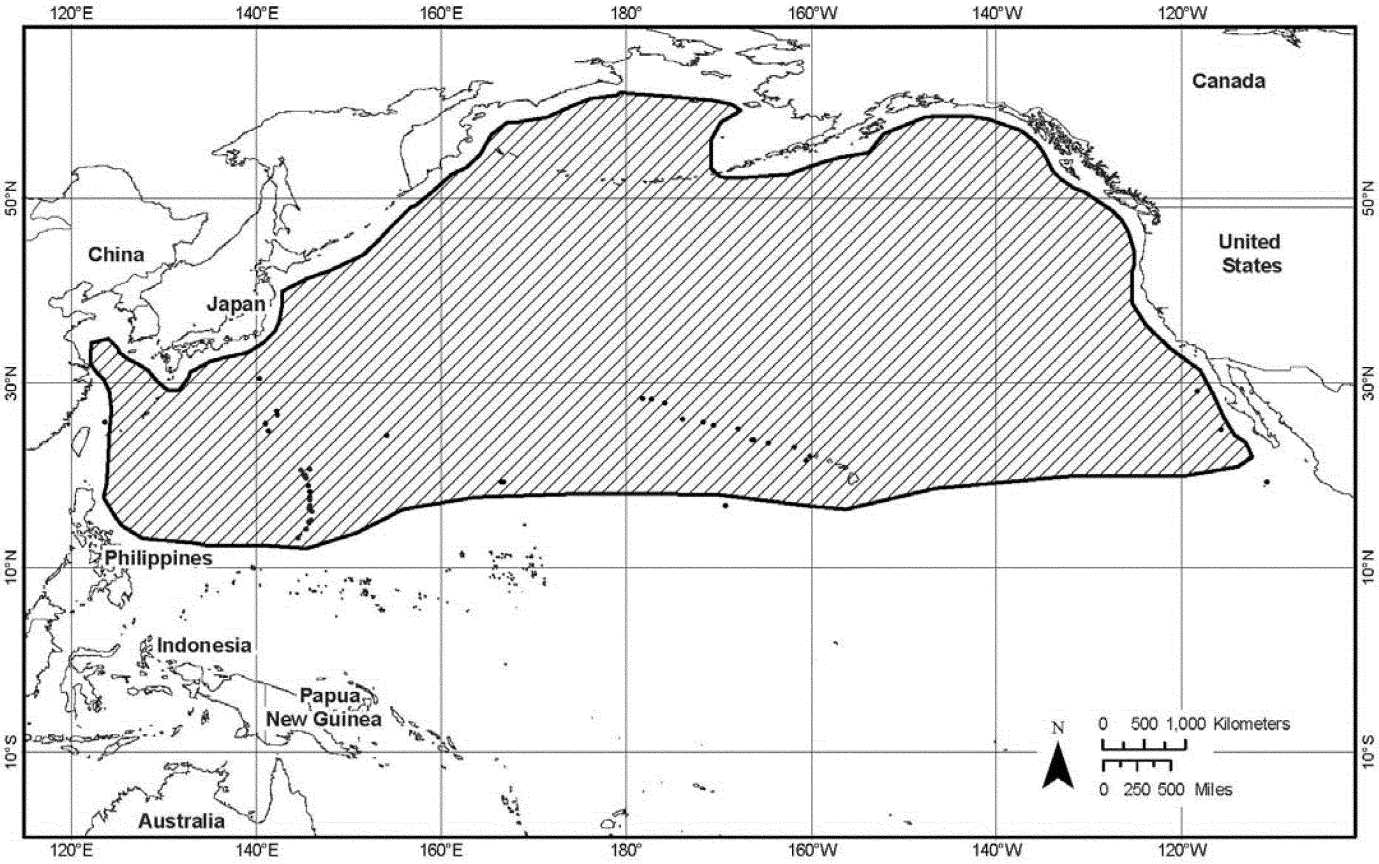
Figure 1. Current Range of Black-Footed Albatross



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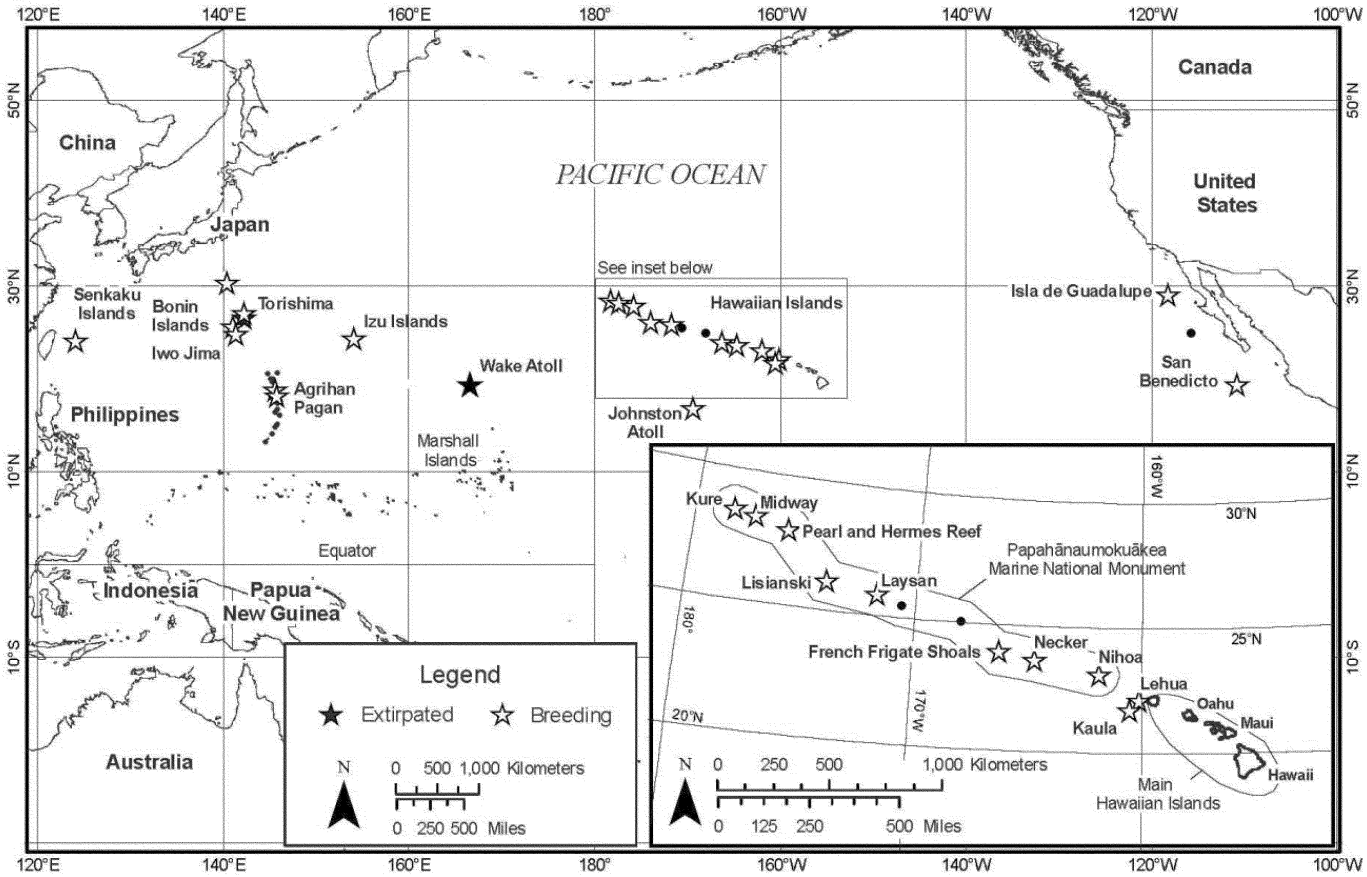
Approximately 95 percent of the breeding population nests in the Hawaiian Islands archipelago in the central Pacific; other breeding colonies are found on the Japanese Islands in the western Pacific in the Izu-Torishima Islands, the Ogasawara Islands (also known as the Bonin Islands), and the Senkaku Islands (Figure 2).

BILLING CODE 4310–55–P

Figure 2. Breeding Distribution of Black-Footed Albatross



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Taxonomy and Description

The black-footed albatross is one of three north Pacific species in the seabird family Diomedeidae (albatrosses). Adults are uniformly sooty brown with a whitish ring at the base of the bill, a white patch behind the eye, and white feathers over the base of the tail and undertail coverts. Birds of all ages have a blackish bill, legs, and feet. Fledglings are uniformly dark brown and acquire a white ring at the base of the bill and around the tail as they age (Hyrenbach 2002, p. 87). The wingspan is 76 to 85 inches (in) (193 to 216 centimeters (cm)), and the average weight is 6.17 pounds (lb) (2.30 kilograms (kg)) (Cousins and Cooper 2000, p. 3). No subspecies are recognized, though significant genetic differentiation between the Hawaiian and Japanese populations has been identified (Walsh and Edwards 2005, pp. 292–294; Eda *et al.* 2008, pp. 112–115), and further research may possibly indicate that taxonomic revision is warranted (Eda *et al.* 2008, p. 115). At present the black-footed albatross continues to be classified by taxonomic authorities as a single species (American Ornithologists' Union 1998 and supplements; Integrated Taxonomic Information System 2011), and there does not appear to be a broad scientific consensus that this classification is incorrect; therefore, we consider it a single species in this finding.

Life History

Black-footed albatrosses range throughout the north Pacific (Cousins and Cooper 2000, p. 12). Reports of banded birds, casual observation, and studies using satellite transmitters have revealed patterns in the use of oceanic habitats by black-footed albatrosses that vary with age and breeding status, and oscillate with the breeding cycle (Cousins and Cooper 2000, p. 12). Adult birds concentrate around the colonies during egg-laying, incubation, and chick brooding. As chicks get older, breeding adults range much farther from the colony to reach productive foraging waters. Post-breeding adults forage near the western coast of North America, and south of Alaska as far west as the Aleutian Islands. Black-footed albatrosses use areas of coastal upwelling or convergence for foraging throughout the north Pacific; these highly productive areas are also used by numerous fisheries (Fernandez *et al.* 2001; Hyrenbach *et al.* 2002; Hyrenbach and Dotson 2003; Fischer 2007; Fischer *et al.* 2009).

Black-footed albatrosses live for 40 to 50 years, and represent a classic example of a ''K-selected'' species (*i.e.,* the species is long-lived, has delayed reproductive maturity, produces relatively few young, and is dependent upon high annual adult survivorship). The earliest known age for first breeding by black-footed albatrosses is 4 years of age, but on average the age of first breeding is 7 years (Cousins and Cooper 2000, p. 51). Pairs mate for life, and mate loss in black-footed albatrosses can cause adults to skip up to five breeding seasons prior to forming a new pair (Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2007, p. 33). Only one egg is laid per year, and pairs do not attempt to renest if nesting failure occurs (Cousins and Cooper 2000, p. 2). Sometimes pairs will skip a breeding year. It is estimated that 75 percent of black-footed albatrosses that fledged a chick one year will go on to breed the next year, while 83 percent of pairs that experience nest failure will breed the next year (Viggiano 2001, p. 59).

Female black-footed albatrosses have a high level of affinity to the nest site. Long-term studies have shown that over 99 percent of females return to breed on the island or atoll where they hatched and fledged (known as their natal site) and establish their own nesting site nearby (Rice and Kenyon 1962a, pp. 532–533). Most have been found to return within less than 20 feet (ft) (6 meters (m)) of the same nest site season to season (Rice and Kenyon 1962a, p. 533). Such is their nest site fidelity that birds banded at a particular site in 1938 were found still nesting at that site 20 years later (Rice and Kenyon 1962a, p. 533). Since the vast majority of females nest on the island where they themselves hatched (Rice and Kenyon 1962a, pp. 532–533), recolonization of formerly occupied islands or atolls (that were abandoned or where black-footed albatrosses were extirpated due to cataclysmic or stochastic events) and colonization of new islands or atolls by dispersing breeders is relatively rare. Such events are not unknown, however. For example, black-footed albatrosses banded as nestlings on Midway Atoll were later observed breeding on Kure Atoll, and other individuals are known to have moved from their natal sites to breed between the islands of Pearl and Hermes Reef, French Frigate Shoals, and Kure Atoll as well (Woodworth 1972, p. 96). Black-footed albatrosses recolonized Torishima Island, the Ogasawara Islands, and the Senkaku Islands followed cessation of World War II military activities in the western Pacific (see *Volcanic Activity,* below), and pioneering attempts by black-footed albatrosses to breed on Mexico's Guadalupe and San Benedicto islands in the eastern Pacific have been reported recently.

Birds arrive at their nesting colonies in the central and western Pacific islands in mid- to late October (Rice and Kenyon 1962a, p. 552; Woodward 1972, p. 92). Eggs are laid between mid-November and mid-December (Rice and Kenyon 1962a, p. 540; Woodward 1972, p. 92; Awkerman *et al.* 2008; Agreement on the Conservation of Albatrosses and Petrels [ACAP 2010], p. 2). Incubation lasts approximately 66 days, and most eggs hatch by early February (Rice and Kenyon 1962a, p. 546). Both adults take turns brooding the chick and attend it for approximately 1 month, after which the adults spend most of their time at sea, returning only to feed the chick (Rice and Kenyon 1962a, pp. 548–549). The chick-rearing stage lasts approximately 140 days, with fledging occurring in mid-June to mid-July (Rice and Kenyon 1962a, p. 562). Once fledged, the young birds remain at sea and do not return to land for 2 to 5 years (Rice and Kenyon 1962a, p. 520; Viggiano 2001, p. 15).

Diet and Feeding Habitats

Black-footed albatrosses are surface feeders and scavengers, generally seizing food within 3 ft (0.9 m) of the ocean's surface (Brooke 2004, p. 191). The birds take prey at the surface of the water, and occasionally partially submerge below the surface (Awkerman *et al.* 2008, p. 14). Fernandez and Anderson (2000, entire) used an immersion monitor and satellite telemetry to evaluate feeding activity patterns during the chick-brooding period, when shorter foraging trips would be expected (Fernandez *et al.* 2001, p. 4). The majority of time at sea was spent flying (90.8 percent), with most immersions less than 100 seconds long, indicating birds were engaged in surface foraging rather than resting (Fernandez and Anderson 2001, p. 580). Immersions (presumed feeding activity) during this study occurred primarily during the daytime, though some presumed feeding activity did occur during the night.

The diet of adult black-footed albatrosses is composed primarily of flying fish eggs, but also includes squid, fish, offal, and human refuse (Brooke 2004, p. 191). Black-footed albatrosses are known to follow fishing boats and are more aggressive than Laysan albatrosses (*Phoebastria immutabilis*) in scavenging fish discards (Fischer *et al.* 2009, p. 758). Harrison *et al.* (1983, entire) and Gould *et al.* (1997, entire) studied the food habits of the black-footed albatross. Harrison *et al.* (1983, pp. 15–18) collected regurgitation samples from adult birds primarily from Laysan Island and Midway Atoll, but also collected samples during the chick-rearing stage from Kure Atoll and French Frigate Shoals, and found the contents were primarily flying fish eggs, squid, and crustaceans. Gould *et al.* (1997, p. 550) sampled birds collected from drift nets in the north Pacific during the nonbreeding season. They found the greatest percentage of stomach contents was squid species typically targeted by the squid and driftnet fisheries. In their analysis of both Laysan and black-footed albatross stomach contents, Sileo *et al.* (1990a, p. 674) found that chicks consume a variety of plastic objects. Black-footed albatrosses are especially prone to inadvertently ingesting plastic because plastic particles floating on or below the water's surface resemble flying fish eggs, a major component of their diet. In addition, flying fish eggs are often laid in floating items, including plastic refuse, thereby increasing the chances of inadvertent plastic ingestion (Cousins and Cooper 2000, p. 5).

Nesting Sites

Black-footed albatross nests are most often a depression scooped out in a sandy substrate, surrounded by a rim of sand (Arata *et al.* 2009, p. 10). They are usually located on exposed sandy beaches at the beginning of the vegetation line (Cousins and Cooper 2000, p. 5; Awkerman *et al.* 2008, p. 20; Arata *et al.* 2009, p. 10). At Midway Atoll and Tern Island (French Frigate Shoals) in the Hawaiian Islands, nests are also located in areas with low-growing vegetation (Arata *et al.* 2009, p. 10). On the volcanic islands of Torishima Island and the Ogasawara Islands, nests are not found on beaches, but are located at high elevations on sparsely to highly vegetated exposed volcanic slopes (Cousins and Cooper 2000, p. 5).

Breeding Distribution

Historically, the breeding range of the black-footed albatross likely extended from Lehua Island (offshore of Niihau Island) in the Hawaiian Islands west to the Senkaku Islands in the western Pacific. In the late nineteenth and early twentieth centuries, this range was reduced due to extirpation of the black-footed albatross from entire breeding islands by egg and feather hunters, and later by military activities on some of the nesting islands in the central and western Pacific from World War II-related military occupation and activities (Rice and Kenyon 1962b, pp. 366–367; Naughton *et al.* 2007, p. 6). The likely historical breeding range of the black-footed albatross prior to these extirpation events is detailed in table 1.

TABLE 1—SUMMARY OF THE HISTORICAL DISTRIBUTION OF BLACK-FOOTED ALBATROSS BREEDING COLONIES AND THEIR CURRENT STATUS AS EXTANT E; EXTINCT X; OR PROSPECTING P (OCCASIONAL BREEDERS SCOUTING OUT NEW NEST SITES; CONSIDERED A POSSIBLE EARLY SIGN OF RANGE EXPANSION)

Breeding colony	Year cited	First known reference	Status
Central Pacific Islands			
Northwestern Hawaiian Islands:			
Nihoa Island	1923	Wetmore [1]	E
Necker Island	1923	Wetmore [1]	E
French Frigate Shoals	1923	Wetmore [1]	E
Laysan Island	1923	Wetmore [1]	E
Lisianski Island	1923	Wetmore [1]	E
Pearl and Hermes Reef	1923	Wetmore [1]	E
Midway Atoll	1923	Wetmore [1]	E
Kure Atoll	1923	Wetmore [1]	E
Main Hawaiian Islands:			
Kaula (Kauai)	1923	Wetmore [1]	E
Lehua (Kauai)	1923	Wetmore [1]	E
Other:			
Taongi Atoll (Marshall Islands)	1874	Dall [1]	X
Wake Atoll or Wake Island	1841	Peale [1]	P
Minami-Torishima (Marcus Island)	1902	Bryon [1]	X
Johnston Atoll	1923	Wetmore [1]	X
Western Pacific Islands			
Iwo Jima (Volcano Islands)	1891	Seebohm [1]	X
Izu Shoto (Torishima Island)	1889	Hattori [1]	E
Ogasawara Gunto (Bonin Islands)	1890	Seebohm [1]	E
Senkaku Retto (Ryukyu Shoto)	unknown	unknown	E
Eastern Pacific Islands			
Isla Guadalupe	1998	Pitman & Ballance [2]	P
San Benedicto	2000	Pitman & Ballance [2]	P

[1] Referenced in Rice & Kenyon, 1962a, p.21
[2] Referenced in Pitman & Ballance, 2002, p. 13.

Wake Island or Wake Atoll was first reported as a breeding colony for black-footed albatross in December 1841 by Titian R. Peale while on a U.S. Exploring Expedition. During this expedition, an egg and a black-footed albatross skin were collected; however, the egg was later judged, by size and shape, to be that of a Laysan and not a black-footed albatross (Rice and Kenyon 1962b, p. 379). Thus, because a single collected skin of a black-footed albatross does not denote nesting or breeding, we cannot conclude that these birds historically nested or bred on Wake Atoll.

Present breeding populations of black-footed albatross occur as follows (table 2): (1) Hawaiian Islands (central Pacific, Hawaii archipelago) (1a) Northwestern Hawaiian Islands—Nihoa Island, Necker Island, French Frigate Shoals, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Atoll; (1b) Main Hawaiian Islands—Lehua Island, Kaula Island; (2) Japanese Islands (western Pacific) (2a) Izu Islands—Torishima Island; (2b) Ogasawara Islands (also known as the Bonin Islands)—nine islets; (2c) Senkaku Islands — three islets (Kawakami *et al.* 2006, p. 187; Chiba *et al.* 2007, p. 5; Eda *et al.* 2008, p. 109).

TABLE 2—BLACK-FOOTED ALBATROSS POPULATION COUNTS OR ESTIMATES OF BREEDING PAIRS FROM ALL KNOWN BREEDING SITES 1993–2010 (UNITED STATES, JAPAN) (ACAP 2010, TABLE 3, P. 4; FLINT 2011A, PERS. COMM.)

Breeding site	Jurisdiction	Last year surveyed	Number of breeding pairs
Hawaiian Islands (Central Pacific)			
Northwestern Hawaiian Islands:			
Nihoa Island	United States	2007	1
Necker Island	United States	1995	112
French Frigate Shoals	United States	2009	4,309
Laysan Island	United States	2010	22,272
Lisianski Island	United States	2006	2,126
Pearl and Hermes Reef	United States	2003	6,116
Midway Atoll	United States	2010	25,581
Kure Atoll	United States	2010	3,486
Main Hawaiian Islands:			
Kaula Island (Kauai)	United States	1993	3 [1]

TABLE 2—BLACK-FOOTED ALBATROSS POPULATION COUNTS OR ESTIMATES OF BREEDING PAIRS FROM ALL KNOWN BREEDING SITES 1993–2010 (UNITED STATES, JAPAN) (ACAP 2010, TABLE 3, P. 4; FLINT 2011A, PERS. COMM.)—Continued

Breeding site	Jurisdiction	Last year surveyed	Number of breeding pairs
Lehua Island	United States	2007	25
Total Central Pacific			64,031
Japanese Islands (Western Pacific)			
Torishima Island (Izu Islands)	Japan	2003	2,150
Ogasawara (Bonin) Islands (Muko-jima Island)	Japan	2006	967
Ogasawara (Bonin) Islands (Haha-jima Island)	Japan	2006	11
Senkaku Islands	Japan	2002	56
Total Western Pacific			3,184
Total Rangewide			67,215

[1] Survey at Kaula was done 16–17 November, 1998, which is early for nesting. Nine birds were present on the island.

As of 2010, there are no established breeding colonies in the Marshall Islands or on Wake Atoll. While black-footed albatrosses have attempted to breed at Wake Atoll on occasion, most nests, both with and without eggs, were subsequently abandoned, and none have ever successfully fledged young. Birds are likely prospecting the atoll for potential nesting sites (Rauzon *et al.* 2008, pp. 14–15) (see Marshall Islands in ''Current Population Status'' below). Isolated attempts by black-footed albatrosses to breed on the Revillagigedo Islands of Mexico have been reported on Guadalupe and San Benedicto islands (Pitman and Ballance 2002, p. 13), but there is no record of a breeding population ever being established (Henry 2007, pers. comm.; Hebshi 2010, pers. comm.). Other than one unsubstantiated report of a ''fully-feathered chick'' on Guadalupe Island in 1998, there is no evidence that any young have been fledged (see Mexican Islands in ''Current Population Status'' below).

Foraging Distribution During the Breeding Season

Satellite telemetry data collected in 1988 and 1989 indicate black-footed albatrosses forage north and northeast of breeding colonies in the Hawaiian Islands. They tend to forage in pelagic (open ocean) oligotrophic (low in dissolved nutrients and high in oxygen) waters within the vicinity of the nest (maximum range 188 miles (mi) (303 kilometers) (km)) during the nest-guard phase (when chicks are less than 18 days old) (Fernandez *et al.* 2001, pp. 4–5; Hyrenbach *et al.* 2002, p. 288). When feeding older nestlings, black-footed albatrosses breeding on Tern Island mixed short trips near nest sites with long trips to the highly productive waters along the continental shelf of North America (Fernandez *et al.* 2001, pp. 4–7; Hyrenbach *et al.* 2002, pp. 288–294). They foraged along the North Pacific Transition Zone, which separates the Subarctic Domain (defined as a water mass with temperature less than 50 °F (10 °C)) from the North Pacific Subtropical Gyre (a large-scale circular feature made up of ocean currents that spiral around a central point; it is made up of four large, clockwise-rotating currents—North Pacific, California, North Equatorial, and Kuroshio)), and is characterized by convergence fronts and high productivity (Hyrenbach *et al.* 2002, p. 296). Overall, the adults ranged from 18° N to 48° N latitude in the north Pacific and over a large area in the eastern Pacific (121° W to 172° W longitude) (Fernandez *et al.* 2001, p. 4). Similar results have been reported using Geographic Positioning Systems (GPS) tracking of breeding birds in the Bonin Islands (Kawakami *et al.* 2006, p. 189). Adults incubating eggs or brooding young chicks foraged within 252 mi (405 km) of the breeding site; over 90 percent of the observations were within 124 mi (200 km) of the colony.

Foraging Distribution During the Nonbreeding Season

During summer months (postbreeding), female black-footed albatrosses captured off the coast of California foraged largely along the transition zone between the California Current (a cold current originating in the northern part of the Pacific Ocean, flowing southeast along the coast of western North America) and the North Pacific Gyre, and spent 39, 43, and 18 percent of their time at sea in tropical waters, subtropical frontal zones, and subtropical waters, respectively (Hyrenbach and Dotson 2003, p. 397). Likewise, they spent 25, 24, and 51 percent of their time foraging in the exclusive economic zones (EEZ) of the United States, Mexico, and the high seas, respectively (Hyrenbach and Dotson 2003, p. 397).

Postbreeding black-footed albatrosses captured off the coast of Alaska ranged from 60° N to 36° N, and 125° W to 180° W (Fischer *et al.* 2009, p. 757). Within this range, they spent more time in continental margin waters versus oceanic waters; within the continental margin waters they spent equal time in the continental shelf, shelf break, and slope waters (Fischer *et al.* 2009, pp. 755–756).

Demography and Population Resiliency

Certain intrinsic aspects of black-footed albatross ecology and demography are relevant to the species' status. Stable populations of K-selected species, such as the black-footed albatross, generally live in relatively constant (*i.e.,* not highly variable) environments and are characterized by low annual productivity rates balanced with high annual survival rates, meaning that individuals must live many years to replace themselves with offspring that survive to recruit into the breeding population. (The letter ''K'' represents the carrying capacity of a given environment, and is also used to represent a species whose reproductive strategy is to keep a stable population close to the carrying capacity.) Cousins and Cooper (2000, pp. 53–54) found that black-footed albatross population trends

were more sensitive to changes in survival than to changes in fecundity.

Although factors that compromise productivity can cause populations to decline, adult survival is often the more important determinant of population size and persistence for a K-selected species (Cousins and Cooper 2000, p. 53). Annual adult death rates for the black-footed albatross are normally very low, on the order of 3 to 8 percent (in other words, annual adult survivorship is about 92 to 97 percent (Cousins and Cooper 2000, p. 50; Veran *et al.* 2007, p. 7; Arata *et al.* 2009, p. 47)). If a sufficient number of adults are removed from the population prior to replacing themselves (*i.e.,* adult survival is decreased beyond a certain threshold), the population will decline. Additionally, reduced juvenile survivorship will also affect the population; Cousins and Cooper (2000, p. 53) estimated that juvenile survival of black-footed albatrosses has to be 86 percent or higher to prevent a population decrease. Estimates of juvenile survivorship for the black-footed albatross have been more varied over the years; Arata *et al.* (2009, p. 47) report a rate as low as 0.688 for the period 1963–1982, but estimate juvenile survivorship of 0.993 over the period 1994–2002. For French Frigate Shoals, juvenile survivorship was estimated at 0.79 for the years 1994–2000 (ACAP 2010, Table 5, p. 8). All of the characteristics of the black-footed albatross—its longevity, low reproductive rates, delayed sexual maturity, irregularity in annual breeding, and life-long pair bonding (with consequent delays in subsequent breeding if a mate is lost)—make it difficult to detect changes in population structure, particularly the recruitment of juveniles into the population. Species with such characteristics are slow to exhibit population declines and are inherently more vulnerable to extinction (Primack 1993, p. 102; Meffe and Carroll 1994, p. 128). These intrinsic aspects of black-footed albatross ecology and demography signal the continuing need to monitor their populations, despite the fact that numbers are presently stable and the species continues to be widely distributed across its range (Arata *et al.* 2009 p. 2; see ''Current Population Status'' below).

Current Population Status

Rangewide

Feather and egg hunters decimated black-footed albatross populations until the 1920s, and an estimate of population size prior to this period is not known. In 1923, the estimated breeding population was 17,800 pairs in Hawaii, and 200 in Japan (Arata *et al.* 2009, p. 35). The current black-footed albatross worldwide population estimate, with most recent counts from the 2010 nesting season, is approximately 67,215 breeding pairs (ACAP 2010, p. 4; Flint 2011a, pers. comm.). Based on a Leslie matrix model, roughly 60,000 breeding pairs were estimated to represent a total world population of approximately 300,000 black-footed albatrosses, including both breeding and nonbreeding individuals (Cousins and Cooper 2000, p. 19; Niel and Lebreton 2005, p. 833); the most recent counts of more than 67,000 nesting pairs therefore puts the estimated world population of black-footed albatrosses at well over 300,000 individuals.

Cousins and Cooper (2000) present data on the number of breeding black-footed albatrosses from Midway Atoll, Laysan Island, and French Frigate Shoals as well as the available information for all other sites throughout the world. An examination of their data indicates a stable or increasing global trend in the number of breeding black-footed albatross in the years 1992 through 1999 (Cousins and Cooper 2000, p. 19 and Figure 19). More recently, data presented by Arata *et al.* (2009, Figure 22) indicate an increasing world population of the black-footed albatross between 1923 and 2005. In addition, survey data indicate populations in the Japanese Islands have been steadily increasing (Cousins and Cooper 2000, p. 23; Hasegawa 2010, pers. comm.; see Figure 4 of this document). All of these population data are based on counts of active nests at breeding sites. It should be noted that because only the breeding component of the species' population is counted, changes in population demographics that could affect the population in the long term cannot be detected with this method (Viggiano 2001, p. 5). For example, any significant increase in juvenile mortality would not be detected until years later, when these birds would normally be entering the breeding population that is counted. In the absence of more precise data, however, these counts are generally used as a rough index of population numbers, and represent the best scientific information available to us.

Hawaiian Islands

Roughly 95 percent of the world population of black-footed albatrosses breed in the Hawaiian Islands. Black-footed albatrosses currently nest on Lehua Island and Kaula Island off of Kauai in the main Hawaiian Islands, and in the Northwestern Hawaiian Islands on Nihoa Island, Necker Island, French Frigate Shoals, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Atoll. Many of the smaller breeding populations of black-footed albatross are not regularly monitored, but standardized counts and estimates of active nests have been conducted in the Northwestern Hawaiian Islands since 1980 at French Frigate Shoals and since 1991 at Midway Atoll and Laysan Island (Naughton *et al.* 2007, p. 6). These three colonies collectively comprise 77 percent of the global breeding population of the black-footed albatross as of 2010 (ACAP 2010, p. 4).

Based on the latest nest count data as of 2010, the largest colony of black-footed albatrosses at 25,581 breeding pairs is on Midway Atoll, representing approximately 40 percent of the world's breeding population. Laysan Island has the second largest colony with 22,272 breeding pairs (approximately 35 percent of the global breeding population), and French Frigate Shoals is the smallest of the three with 4,309 breeding pairs, or roughly 7 percent of the world's breeding pairs (Flint 2011a, pers. comm.). Prior to 1997, instead of direct nest counts on Laysan Island, nesting estimates were derived from counts on plots from a portion of the island that were then extrapolated to represent total nesting area. Beginning in 1997, the direct count method (counts of all nests) used at French Frigate Shoals and Midway Atoll was adopted on Laysan Island as well. An analysis of the nest count data from these three regularly monitored colonies at Laysan Island, French Frigate Shoals, and Midway Atoll for the years 1998 to 2009 demonstrates an increasing trend on the order of 0.93 percent per year for the three islands combined (ACAP 2010, p. 5, Fig. 2A). Individually, the breeding population at Midway increased at an average annual rate of 1.3 percent between the years 1992 and 2009 (ACAP 2010, p. 7, Table 4). At French Frigate Shoals, the colony for which the longest time series of data is available, the number of breeding pairs has fluctuated between the years 1980 and 2009, but overall is increasing at an average rate of 0.43 percent annually (ACAP 2010, p. 7, Table 4). Laysan Island, however, has shown a negative trend over the years 1998 to 2009, decreasing at an average annual rate of 1.1 percent (ACAP 2010, p. 7, Table 4). Laysan Island formerly supported the largest breeding population of black-footed albatrosses, until it was surpassed by Midway Atoll in 2004 (ACAP 2010, p. 6). Figure 3 shows the linear trend between 1998

and 2009 for the number of pairs nesting at French Frigate Shoals, Laysan Island and Midway Atoll, individually and combined (taken from ACAP 2010, p. 6, Figure 2).

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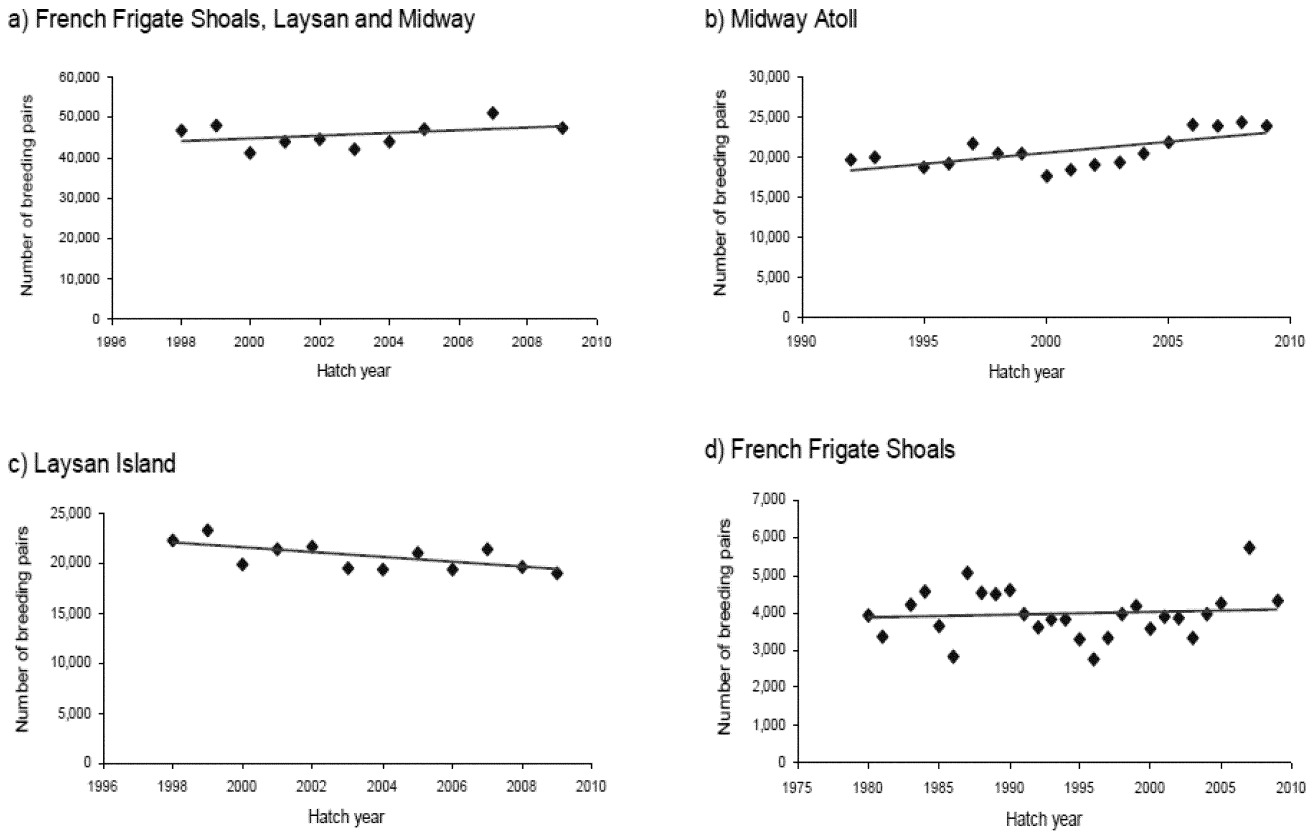

Figure 3. Number of breeding pairs between 1998 and 2009 at a) French Frigate Shoals, Laysan, and Midway collectively; b) Midway Atoll only; c) Laysan Island only; and d) FrenchFrigate Shoals (from ACAP 2010, p. 6).

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These trends are consistent with those reported in a recent status assessment of the black-footed albatross conducted by the U.S. Geological Survey (Arata *et al.* 2009, entire). The linear regression analysis in that report indicates a significant increasing trend between the years 1923 and 2005 for black-footed albatrosses at Midway Atoll, Laysan Island, and French Frigate Shoals combined, and no trend (stable population) for the more recent time periods examined, from 1957 to 2005 and 1998 to 2005 (Arata *et al.* 2009, p. 29, Table 6). The divisions in time steps represent the earliest thorough surveys of the population in 1923 and 1957, and the beginning of standardized surveys at Midway Atoll and Laysan Island in 1998. The authors attribute the positive growth in the black-footed albatross population, since 1923, to the cessation of poaching at nesting colonies. In addition, they state that only the time-series data from French Frigate Shoals are long enough to show a potential change over time, and note that this population shows positive annual population growth rates with a median trend for growth over the next 60 years. However, they also point out that French Frigate Shoals represents only a small fraction of the global population and advise caution in extrapolating these numbers (Arata *et al.* 2009, p. 50), and we note further that the projected growth trend is based on an implicit assumption of no changes in conditions.

Arata *et al.* (2009) also used matrix models to examine population data for the black-footed albatross over the time period 1955 through 2003. These results, summed across all three colonies at Midway Atoll, Laysan Island, and French Frigate Shoals in the Northwestern Hawaiian Islands, suggest the black-footed albatross population overall was stable or slightly increasing during that time period, with an annual population growth rate of 0.3 percent a year (Arata *et al.* 2009, p. 46). Although positive, the authors note the observed growth rate of 1.003 is less than the natural annual growth rate estimate of 1.035 for the species. They attribute this difference of 3.2 percent in potential population growth to fishery mortality (Arata *et al.* 2009, p. 46). In other words, the data indicate that the black-footed albatross population was stable or slightly increasing between 1955 and 2003, but that it was increasing at less than its potential annual growth rate. Wiese and Smith (2003, pp. 34–35) similarly concluded that the world population of black-footed albatross was stable, with an observed annual growth rate of 1.005 (based on demographic rates as published in Cousins and Cooper 2000 and Lewison and Crowder 2003), but also noted the population was growing at less than its estimated

potential annual growth rate of 1.04 (Wiese and Smith 2003, p. 33). The authors cautioned that, although the black-footed albatross population appeared to be stable, this reduced annual growth rate renders the population vulnerable to changes in their environment, especially in conjunction with sustained anthropogenic impacts (Wiese and Smith 2003, p. 35).

Japanese Islands

Breeding populations of black-footed albatross currently occur on Izu-Torishima (Torishima) Island in the Izu Islands, on nine islets in the Ogasawara islands within the Bonin Island complex, and on three islets in the Senkaku Islands (Kawakami *et al.* 2006, p. 187; Chiba *et al.* 2007, p. 5; Eda *et al.* 2008, p. 109). Few data are available specific to the breeding population of the black-footed albatross in Japan. The Western Pacific Regional Fishery Management Council (Council) provided us with fledging success estimates for the Ogasawara Islands for 2009. The Council reported 801 chicks fledged, which is not directly comparable to the 967 nesting pairs in 2006 shown in table 2. They extrapolated these fledgling count data to estimate the number of nesting pairs, and concluded approximately 1,070 black-footed albatross nesting pairs were present on the Ogasawara Islands in 2009, which they interpreted as representative of an increase in the population. Because of the documented annual variability in nesting activity in black-footed albatross breeding colonies and lack of other supporting information, we believe extrapolation from a single year of fledging success data to an increase in the black-footed albatross population trend is inappropriate. However, Dr. Hiroshi Hasegawa of Toho University in Japan has additionally reported that the number of black-footed albatross chicks reared on Torishima Island has increased steadily between 1957 and 2010 (Figure 4) and that the populations on the Ogasawara and Senkaku Islands have also increased (Hasegawa 2010, pers. comm.).

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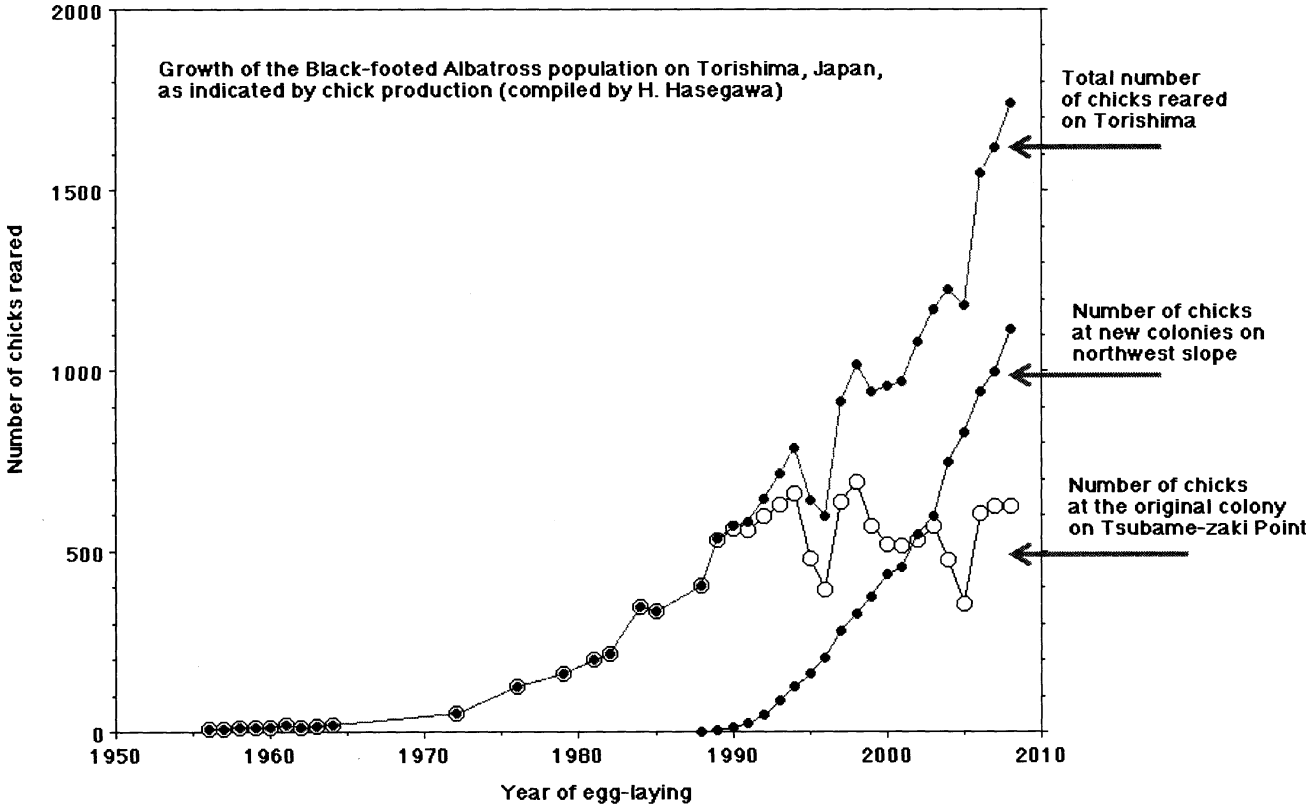

Figure 4. Growth of the black-footed albatross population on Torishima Island, Japan, as indicated by chick production (Hasegawa 2010, pers. comm.).

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Marshall Islands and Wake Atoll

Black-footed albatrosses have infrequently been reported on Wake Island, a U.S. territory in the Marshall Islands archipelago in the central Pacific, an area from which they had been extirpated by feather hunters prior to World War II (Rice and Kenyon, 1962a, pp. 379–380; Rauzon *et al.* 2008, pp. 15–16). Although a few birds have occasionally been observed nesting on Wake Island, any eggs laid were subsequently abandoned, and there have been no reports of black-footed albatross fledging here (Rauzon *et al.* 2008, p. 15). These birds are attempting to breed and may be prospecting for future nesting sites on this island, but based on the available information, we conclude that at present there is no established breeding population of black-footed albatrosses on Wake Island or on any island, atoll, or reef in the nearby Marshall Islands (see Tables 2 and 3).

Mexican Islands

There have been a handful of reports recording intermittent nesting activity by black-footed albatrosses on Guadalupe and San Benedicto islands in the Revillagigedo Island archipelago off the tip of Baja California, Mexico (Pitman and Ballance 2002, p. 13). In 1999, Pitman and Ballance (2002, p. 13) recorded a single black-footed albatross standing among a group of Laysan albatrosses on Albatross Beach on San Benedicto Island. In 2000, they recorded an adult black-footed albatross sitting on an egg on the rim of Herrera Crater on San Benedicto Island (Pitman and Ballance 2002, p. 13). Also in 2000, but on Guadalupe Island, military personnel identified a black-footed albatross nesting area that was set apart from the Laysan albatross nesting area. They also reported seeing a ''fully-feathered chick'' at this same site in 1998, no breeding in 1999, and no breeding in 2000, although one pair of birds was reported ''visiting'' the site every afternoon in 2000 (Pitman and Ballance 2002, p. 13). Apart from these reports, no black-footed albatross have been recorded nesting on either San Benedicto or Guadalupe islands in the last 10 years, although they have been recorded visiting and possibly prospecting for nesting sites on both islands during breeding seasons (Henry 2007, pers. comm.; Hebshi 2010, pers. comm.). The International Union for Conservation of Nature (IUCN) Red List reports a population of 400 black-footed albatross exists on Guadalupe Island (IUCN Red List, *http://www.iucnredlist.org*). We note this report appears to be in error, as there is a known population of approximately 400 Laysan albatross on Guadalupe Island, but there are no black-footed albatross. In conclusion, at this time, there is no established breeding population of black-footed albatross on either San Benedicto Island or Guadalupe Island in Mexico, but birds may sporadically nest there and appear to be prospecting the islands for potential nesting sites (Naughton 2010, pers. comm.).

Population Trends and Projections

Noticeable declines in nesting activity during the 1990s generated concern for the health of the black-footed albatross population, and several population modeling efforts were undertaken to evaluate the cause of the decline and to estimate the worldwide status of the black-footed albatross. Cousins and Cooper (2000, entire), Lewison and Crowder (2003, entire), Wiese and Smith (2003, entire), Niel and LeBreton (2005, entire), Veran *et al.* (2007, entire), and Arata *et al.* (2009, entire) used the nest count data collected by the Service on French Frigate Shoals, Midway Atoll, and Laysan Island, estimates of bycatch rates from the domestic and international fisheries, estimates of adult survival, and other population parameters to analyze and project black-footed albatross population trends. Population projections specific to the Japanese breeding colonies of black-footed albatross are not available.

The conclusions regarding future black-footed albatross population trends based on these different modeling efforts are not easily comparable because of limited or nonexistent empirical data. The various researchers consequently had to rely on various assumptions, and these assumptions often varied between models, as did the methods. In part due to these differences in assumptions, the conclusions reached by the various models are not consistent, making it difficult to project the future population condition of the black-footed albatross with certainty. Here we briefly summarize and evaluate each of these efforts.

Cousins and Cooper (2000, entire) investigated the population parameter values available at the time of their analysis, evaluated changes in demographic rates such as adult and juvenile survival, and modeled effects of longline fishing activity on the black-footed albatross. They reported a mean adult survivorship rate of 0.923 (range 0.81–0.994) over the years 1961 to 1966, based on data from Midway Atoll, and stated that this estimate of adult survival was based on data collected when the Hawaii-based longline fishing fleet represented only a small fraction of the north Pacific fishing effort (Cousins and Cooper 2000, p. iv). They also noted that this adult survivorship rate may be an underestimate (Cousins and Cooper 2000, p. 50). They estimated more recent adult survivorship, based on the years 1991–1997, as in the range of 0.90–0.94 (Cousins and Cooper 2000, p. 50).

According to a predictive model that estimated the annual population growth rate based upon varying levels of mortality and adult and juvenile survival rates, Cousins and Cooper (p. 53) found black-footed albatross population trends were more sensitive to changes in survival than fecundity, and reported juvenile survival has to be 86 percent or higher to prevent a population decrease, assuming adult survivorship of 0.93 and fecundity of 0.25 fledglings per adult (note that this model utilized a combination of experimental rates from black-footed albatrosses and Laysan albatrosses, since data for black-footed albatrosses were limited at the time). However, the most recent values for black-footed albatross survivorship (adult survivorship 0.967 and juvenile survivorship 0.993; Arata *et al.* 2009, p. 47) are higher than those for Laysan albatrosses, which were used in their models (adult survivorship 0.947 and juvenile survivorship 0.57; Cousins and Cooper 2000, p. 49).

Their models indicated the potential annual growth rate of the black-footed albatross population, without any bycatch loss, is in the range of 0 to 4 percent (annual growth rate, or lambda (λ) of 1.0 to 1.04) (Cousins and Cooper 2000, p. 56). In addition, they developed an estimate of potential biological removal—the maximum mortality that can be sustained before declines are observed—as 10,000 birds per year (Cousins and Cooper 2000, p. 57). Based on anecdotal evidence, they report the interactions of Japanese fisheries with black-footed albatross as insignificant (H. Hasegawa, Toho Univ., pers. comm., as cited in Cousins and Cooper 2000, p. 67). The demographic parameters and modeling efforts presented by Cousins and Cooper (2000, entire)) serve as the basis for some of the predictive models developed by several later researchers.

Lewison and Crowder (2003, entire) developed an age-structured matrix model. They based their longline fishing bycatch rates on published rates for the Hawaii and Alaska fisheries, and estimated annual fishing effort by international longline fleets (Lewison and Crowder 2003, pp. 774–746). Since their baseline population model was based on the demographic parameters reported by Cousins and Cooper (2000), the authors state that ''double-dipping'' (adding estimated fisheries bycatch to a demographic rate that already reflects mortality from fisheries) was not likely, based on their stated assumption that significant fisheries mortality was not occurring during the time period when the data used by Cousins and Cooper were collected (mid-1970s; Lewison and Crowder 2003, p. 747). The authors assigned three levels of mortality and age-based survival probabilities to evaluate the effect of longline fishing on the black-footed albatross. Population trajectories under all mortality levels resulted in projected declines over a 20-year period (Lewison and Crowder 2003, p. 748). According to these models, mortality from longline fishing exceeded the potential biological removal value developed by Cousins and Cooper (2000) (Lewison and Crowder 2003, p. 748).

The authors stated their estimates are likely conservative, since the reported bycatch estimates do not include the estimated 30 percent of birds caught in fishery operations that are scavenged or dislodged from the hooks prior to observation, and are, therefore, not counted as bycatch (Lewison and Crowder 2003, p. 751). In addition, they pointed out that due to the life-history characteristics of the black-footed albatross—longevity, delayed maturity, low fecundity—there is a lag in population response, and the impact of threats that may cause declines in adult survival may not be detectable for many years (Lewison and Crowder 2003, p. 751). The authors concluded that although declines had not been observed, the bycatch rates for black-footed albatross suggested population-level effects were likely (Lewison and Crowder 2003, p. 751).

Wiese and Smith (2003, pp. 29–31) also estimated black-footed albatross annual growth rates using an age-structured matrix model based on the published demographic parameters of Cousins and Cooper (2000) and Lewison and Crowder (2003, Table 1). However, unlike Lewison and Crowder (2003), they assumed incidental fishing mortality was already incorporated in the adult survival rate, based on their observation that longline fishing has occurred in the north Pacific since the mid-1900s, and thus would have been in place when the data serving as the basis for calculating that adult survival rate were collected (Wiese and Smith 2003, p. 30). Wiese and Smith's estimate of a potential annual growth rate of 1.04 in the absence of fisheries mortality is identical to the estimate presented by Cousins and Cooper (2000, p. 56). Wiese and Smith's results showed the population was stable with a stochastic annual intrinsic growth rate of 1.005 (range 0.990–1.018), and projected annual population growth rates of 0.98–1.04 percent over a period of 20 years based on known demographic values at the time of their analysis (Wiese and Smith 2003, p. 33 and Figure 4), indicating a stable population.

In addition, the authors found their model successfully fit real data (COSEWIC 2007, p. 29). Wiese and Smith (2003, p. 35) pointed out data collected during breeding bird censuses since 1992 and subsequent population projections do not support the projected decline that served as the basis for the IUCN designation of black-footed albatross as a vulnerable species (upgraded to ''endangered'' by the IUCN in 2003). However, they also emphasized the decreased annual population growth rate of the black-footed albatross, reduced below its maximum potential, renders the species vulnerable to additional stressors, even if the species is currently abundant, and they stressed the need for careful monitoring of colonies and the use of bycatch reduction measures in Canadian and international longline fisheries.

Niel and Lebreton (2005, entire) developed a model to estimate the annual maximal growth rate of a species from incomplete demographic data and used the black-footed albatross as a case study. They applied the population parameters developed by Cousins and Cooper (2000, entire) in their model and calculated a maximal annual growth rate of 1.059 (Niel and Lebreton 2005, p. 833). Additionally, they calculated the potential excess growth (used as an estimate of the maximum additional mortality the population could sustain on an annual basis without declining) of the population as 8,850 individuals. (It should be noted that Niel and Lebreton (2005) utilized the population parameters for the Laysan albatross presented in Cousins and Cooper (2003, p. 49; breeding age of 8.6 years and adult survivorship of 0.947) rather than those specific to the black-footed albatross, since Cousins and Cooper used the parameters for the Laysan albatross in their initial modeling efforts in the absence of data for the black-footed albatross (Cousins and Cooper 2000, p. 49)). It is not clear why they did so, since Cousins and Cooper (2000, p. 47) did provide an adult survivorship estimate specific to black-footed albatross, but it may be because Cousins and Cooper (2000, p. 50) believed their data likely underestimated adult survivorship of black-footed albatross. More recent estimates of black-footed albatross adult survivorship are 0.967 for the time period 1994–2002 (Arata *et al.* 2009, p. 47), slightly greater than the estimate of 0.947 for Laysan albatross used by Niel and LeBreton (2005)). Based on their calculations, Niel and LeBreton (2005, p. 833) concluded the additional mortality associated with the longline fishery, based on an estimated mortality of 12,000 individuals a year during the 1990s, has a biologically significant impact on the growth potential of the black-footed albatross population.

Lacking reliable estimates of bycatch rates, Veran *et al.* (2007, entire) developed a model to quantify the relationship between albatross populations and longline fishing by using capture-recapture data to develop survival estimates, and investigated the relationship between fishing effort and black-footed albatross adult survival using principal components analysis. One of the key assumptions of their model was that the level of bycatch is proportional to fishing pressure; thus, they assumed mitigation measures were not in place to reduce incidental mortality from fisheries (Veran *et al.* 2007, p. 4). Their adult survivorship estimates were based on capture-recapture data gathered between the years 1992–2003 on Tern Island in the Northwestern Hawaiian Islands (Veran *et al.* 2007, p. 3). Their results suggested a significant negative relationship between adult survival and fishing effort (Veran *et al.* 2007, p. 1). When fishing effort was high, adult survival was estimated to be 92 percent, which the authors described as low compared to other albatross species, and adult survival was related to fishing effort in a nonlinear fashion (Veran *et al.* 2007, pp. 5–7). Inspection of the adult survivorship data presented for 17 albatross species shows that Veran *et al.'s* estimated 0.92 survivorship of the black-footed albatross is on the borderline between those albatross species that were categorized as being impacted by fisheries (range 0.84 to 0.91) and those not impacted by fisheries (range 0.926 to 0.98) (Veran *et al.* 2007, Appendix S2). The authors estimated annual adult survival of black-footed albatross would be approximately 95 percent in the absence of fishing mortality (Veran *et al.* 2007, p. 8).

Veran *et al.* (2007, p. 9) concluded the low adult survival probability during the study period, combined with the significant correlation with longline fishing, suggests an anthropogenically induced decline for the black-footed albatross population. However, their only reference to evidence of any decline in the breeding population is a citation to unpublished data from the Service for the years 1992 to 2004 (Veran *et al.* 2007, p. 2); we note that more recent Service data for 1998 to 2009 indicate the black-footed albatross population is not in decline, but is stable or increasing at a rate of 0.93 percent a year (95 percent confidence interval (CI) 0.85 to 1.00; ACAP 2010, p. 5). (The Service used data from 1998 through 2009 because it reflects direct counts of breeding black-footed albatross on Laysan; we considered data from 1992 through 1998 less reliable as it reflects only estimates of breeding numbers, with resulting wide margins of error). In conclusion, Veran *et al.* (2007, p. 9) stressed the importance of efficient mitigation measures to reduce incidental mortality and maintain a sustainable survival probability for the black-footed albatross.

Arata *et al.* (2009) conducted a status assessment of the black-footed albatross, evaluated current population trends using linear regression and matrix models (both discussed above under ''Current Population Status''), and projected future trends using population viability analyses (PVA), assuming current conditions but incorporating environmental and demographic stochasticity. The authors based their analyses on counts of nesting birds from Midway Atoll, Laysan Island, and French Frigate Shoals in the Northwestern Hawaiian Islands; counts were available for 11 years: 1923, 1957, 1992, and 1998–2005 (Arata *et al.* 2009, p. 77). The survivorship rates presented and utilized by Arata *et al.* (2009, p. 47) were higher than those reported in earlier studies; for the years 1994 to 2002, they calculated an adult survivorship rate of 0.967 (compared to 0.926 for the years 1963 to 1982, and 0.892 for the years 1983 to 1993) and a juvenile survivorship rate of 0.993 (compared to 0.688 for 1963 to 1982 and 0.668 for 1983 to 1993). These rates suggest that both adult and juvenile survivorship may have increased from the mid-1990s to 2002, the last year covered in the survivorship estimates.

Arata *et al.* (2009, p. 46) estimated total fishery bycatch, including international fisheries, at 5,228 birds per year in 2005 and found this was within the mortality level that can be sustained by the black-footed albatross population without causing a decrease (Arata *et al.* 2009, p. 46). Their calculated maximum potential biological removal rate was 11,980 birds per year (range 10,579–12,796) (Arata *et al.* 2009, p. 47). All of their model scenarios indicated that when both the pelagic longline and pelagic driftnet fisheries were active during the 1980s the incidental mortality of black-footed albatross exceeded the potential growth capacity for the species (Arata *et al.* 2009, Figure 4, p. 15), and they concluded that the closure of the high seas pelagic driftnet fishery in 1992 was critical to preventing further population declines for the black-footed albatross (Arata *et al.* 2009, p. 46). In terms of the current conditions, the authors advised caution in interpreting results because there is such great uncertainty in the bycatch estimates and suggested that if the estimated bycatch level is doubled as a conservative safeguard for potentially underestimating bycatch, the resulting value approaches the potential biological removal maximum, and the upper 95-percent confidence limit exceeds that value (Arata *et al.* 2009, pp. 46, 51).

Although Arata *et al.* (2009, p. 51) stated that fishery bycatch ''may be causing a decrease in black-footed albatross populations,'' it is not clear how they arrived at that conclusion since they offer no evidence of a population decrease, and their conclusions point to rangewide populations being stable or increasing for their period of analysis. We assume the authors meant that, given the uncertainty in bycatch estimates, a population decline might be expected if the worst-case scenario were realized and bycatch was actually twice as much as the estimate they used (see, for example, the discussion regarding the uncertainty of bycatch estimates, particularly with regard to international longline fisheries, on p. 67 of Arata *et al.* 2009). Individual PVAs showed breeding colonies on Midway Atoll and French Frigate Shoals are stable or increasing, with projected annual population growth rates of 1.5 percent (95 percent CI 1.1 to 1.9) and 1 percent (CI 0.8 to 1.2) a year, respectively (Arata *et al.* 2009, pp. 39, 41). In contrast, the population on Laysan Island is declining, with a negative annual growth rate of 1.3 percent (CI -1.7 to -0.9) per year (Arata *et al.* 2009, p. 41).

Projections of future trends for all three colonies showed a high degree of uncertainty, with high probabilities of colonies both increasing and decreasing in the future, although in most cases the probability of future increases is greater than the probability of future decreases (Arata *et al.* pp. 39–45, 51). The authors concluded that, under conditions present in 2005, the black-footed albatross population is not at risk of a substantial decrease over the next 60 years (Arata *et al.* 2009, p. 50). Overall, the decreases at Laysan Island appear to be offset by the positive growth observed at Midway Atoll and French Frigate Shoals, resulting in the overall stable or positive trend.

Arata *et al.* (2009, p. 50) reported that the assumption of zero bycatch prior to 1970, as assumed by the previous analyses of Cousins and Cooper (2000) and Lewison and Crowder (2003), is not supported by their model (Arata *et al.* 2009, p. 46). They questioned the key assumption in the Lewison and Crowder (2003) model that led to the prediction of a rapid population decline for the black-footed albatross over the 60 years following their analysis, namely the assumption that there was no effect of fishery bycatch on adult survivorship at the time the data were gathered that served as the basis for demographic parameter estimates, in the 1960s and 1970s. Arata *et al.* (2009, p. 50) report that fishery effort data from the Ocean Fisheries Program indicate that fishery bycatch was in fact most likely significant during this time period (see Arata *et al.* 2009, Figure 4, p. 15). If so, this would result in analyses such as those of Cousins and Cooper (2000) and Lewison and Crowder (2003) having inadvertently doubled the impact of fisheries bycatch, since bycatch effects would already be reflected in the survivorship rates used, but mortality from bycatch was then additionally imposed on the population in the models. This inadvertent doubling of bycatch effects would account for the prediction of particularly rapid population decreases. Arata *et al.* (2009, p. 79) point out the nonindependence between survival estimates and fishery bycatch levels since the pelagic fishery started in 1952, and caution that survival estimates affected by fishery mortality used in previous population assessments may have significantly influenced results.

We additionally received comments during the information solicitation period indicating this possible double-counting of fisheries mortality in the Lewison and Crowder (2003) model, and pointing out that it would have resulted in erroneous predictions of sharp population decline (*e.g.,* Harrison 2008, pers. comm., p. 9). More importantly, perhaps, we received a communication from the senior author of the Lewison and Crowder (2003) analysis, in which Dr. Rebecca Lewison points out that their paper had illustrated population-level trajectories for the black-footed albatross *if bycatch levels remained constant and bycatch was unmitigated,* and assuming the bycatch levels observed in the Hawaii fishery from 1994 to 2000 would continue over the 60 year time period of the projection. ''This assumption has already been shown to be false,'' Dr. Lewison stated, ''There have been several NOAA regulations from 2001–2004 which have included initial and revised mitigation device requirements, improved performance specifications of mitigation devices, and spatial/temporal fishing closures. It is clear that mortality levels have dropped dramatically as a result'' (Lewison 2007, pers. comm., p. 2). An accurate understanding of the Lewison and Crowder (2003) model has important consequences, as the severe population declines projected by that particular model led, at least in part, to the IUCN changing the status of the black-footed albatross from ''vulnerable'' to ''endangered'' in 2003 (IUCN 2011), a change which further played a key role in spurring the original petition to list the species under

the Act (EarthJustice 2004, p 2). The IUCN change in classification also apparently served as the basis for NatureServe to change the ranking of the black-footed albatross from G5 (globally secure) to G3/G4 (vulnerable) (NatureServe 2011).

Subsequent modeling efforts have produced different results. The modeling by Arata *et al.* (2009, pp. 50–51), which accounted for bycatch impacts in the observed demographic rates utilized in the models (Arata *et al.* 2009, p. 79), did not project future declines in the black-footed albatross population. Wiese and Smith (2003, p. 30) likewise considered that the black-footed albatross had sustained mortality in the northeastern Pacific fisheries since the 1970s, and, therefore, considered the survival rate data collected during that time to represent a population already affected by incidental mortality due to fisheries; their model also did not support projections of a population decline (Wiese and Smith 2003, p. 35). We consider these models to provide more accurate projections of future population trends in the black-footed albatross since they avoid the issue of double-counting mortality from fisheries bycatch. However, it appears the conservation status of the black-footed albatross has not yet been updated in light of this new information by either NatureServe (2011; population trend information cites to IUCN 2000) or the IUCN, although the IUCN does note that its current categorization of the black-footed albatross is likely to be revisited pending the outcome of a review of the species' population status (IUCN 2011).

Population-level estimation of demographic parameters in black-footed albatrosses has proved difficult because of multiple factors, including band loss and variation in capture-recapture efforts (Doherty *et al.* 2006, pp. 175–176). Until recently, the population monitoring program in the Hawaiian Islands consisted only of annual counts of breeding birds in three colonies at French Frigate Shoals, Midway Atoll, and Laysan Island. The program did not account for the proportion of nonbreeding birds in a year. A change in the count data from year to year could, therefore, reflect either a change in the total breeding population size or a change in the proportion of birds returning to breed in a given year (Naughton *et al.* 2007, p. 15).

The Service has contracted with USGS's Patuxent Wildlife Research Center to review the black-footed albatross monitoring program implemented by the Service in the Northwestern Hawaiian Islands. A pilot study has been undertaken that is expected to provide information on adult survival, probability of a breeder skipping a year, and reproductive success (Arata *et al.* 2009, p. 21; Naughton 2009, pers. comm.). These parameters are important for refining demographic models and determining population trends.

Summary Evaluation of Population Status and Trend Data

Following the end of feather hunting at nesting colonies, the world population of the black-footed albatross recovered from an estimated low of 17,800 breeding pairs in Hawaii and 200 breeding pairs in Japan in the early 1920s (Arata *et al.* 2009, p. 35) to an estimate of 64,031 breeding pairs in Hawaii and 3,184 breeding pairs in Japan as of 2010 (ACAP 2010, Table 3, p. 4; Flint 2011a, pers. comm.). Our evaluation of the best available scientific data indicates the world population of the black-footed albatross is currently stable or slightly increasing, although population growth is below its potential maximum, likely due to the impact of incidental bycatch in fishery operations (Wiese and Smith 2003, p. 35; Niel and Lebreton 2005, p. 833; Arata *et al.* 2009, p. 46). In the Hawaiian Islands, home to an estimated 95 percent of the breeding population of the black-footed albatross, a decrease in the number of breeding pairs on Laysan Island appears to be offset by increases at Midway Atoll and French Frigate Shoals, resulting in an overall positive trend and an increase of 0.93 percent annually for these three areas combined for the years 1998 through 2009 (ACAP 2010, p. 5). The nearly 40 percent reduction in the size of the colony on Laysan Island since the late 1950s (ACAP 2010, p. 7), however, does indicate cause for concern, as well as the need for further research to determine the underlying cause of this decline. In Japan, indications are that the number of breeding pairs has steadily increased over time (Cousins and Cooper 2000, p. 23; Arata *et al.* 2009, p. 39; Hasegawa 2010, pers. comm.).

There is little doubt that incidental mortality from fisheries had a significant negative impact on black-footed albatross populations in the past (Niel and Lebreton 2005, p. 833; Arata *et al.* 2009, p. 46), and recent analyses demonstrate a significant negative relationship between black-footed albatross survivorship and fisheries effort (Veran *et al.* 2007, p. 1). Examination of estimated bycatch data over the past 50 years shows high numbers of black-footed albatrosses killed in the pelagic driftnet and longline fisheries, peaking with 15,290 birds in 1961 and again with 16,215 birds in 1988 (Arata *et al.* 2009, p. 14). Past bycatch estimates ranged generally between approximately 6,000 and 10,000 birds a year, often exceeding the maximum potential biological removal value estimated for the black-footed albatross (Arata *et al.* 2009, Figure 4, p. 15; p. 46). However, mortality of black-footed albatrosses was greatly reduced following the closure of the high seas driftnet fishery by a United Nations resolution in 1992 (ACAP 2010, p. 12) and implementation of regulatory bycatch measures in U.S. longline fleets in 1997 and 2002 (Arata *et al.* 2009, p. 14, Figure 4; Moore *et al.* 2009, p. 444, Figs. 3A and 3B). Bycatch of black-footed albatrosses in the Hawaii-based pelagic longline fishery has decreased from over 1,300 birds taken annually in 1999 and 2000 to less than 100 in 2007 (annual report on seabird interactions and mitigation efforts in the Hawaii longline fishery for 2007, Administrative Report, U.S. Dept. of Commerce, NOAA, NMFS, PIRO, April 2008). The increased survivorship probabilities observed for both adult (0.967) and juvenile (0.993) black-footed albatross since these measures have been in place, for the years 1994–2002, may reflect this significant reduction in mortality (Arata *et al.* 2009, p. 47).

Attempts to project the future condition of the black-footed albatross population have produced inconsistent results. However, some of the past models that suggested incidental mortality from fisheries bycatch may exceed the level that can be sustained by the black-footed albatross population were based on demographic data gathered prior to both the high-seas driftnet moratorium (1992) and to regulatory bycatch reduction measures implemented in U.S. fisheries (1997, 2002) (*e.g.,* Cousins and Cooper 2000). It is not known what these models might project under current conditions, as these bycatch reduction measures have resulted in a significant decrease in incidental mortality of albatrosses (American Bird Conservancy 2008, pp. 7–9; Awkerman *et al.* 2008; Arata *et al.* 2009, pp. 14, 46; Moore *et al.* 2009, p. 444; ACAP 2010, p. 12).

The model of Lewison and Crowder (2003) assumed bycatch mortality was constant, and the model of Veran *et al.* (2007) assumed no bycatch mitigation measures were in place; neither of these assumptions are met under present conditions since effective bycatch reduction measures have been put in place in the U.S. fleets (acknowledging the level of bycatch in international

fleets remains unknown and knowledge of bycatch in the U.S. North Pacific fleets is imperfect). That these assumptions are now known to be false has been acknowledged (Lewison 2007, pers. comm., p. 2). In addition, the studies of Cousins and Cooper (2000) and Lewison and Crowder (2003) appear to have used demographic parameters based on a potentially erroneous assumption of zero bycatch at the time the data on survivorship values were collected, resulting in likely exaggerated predictions of rapid population declines when mortality from bycatch was added to demographic rates that already reflected ongoing bycatch at the time the data were collected (Arata *et al.* 2009, p. 46). When bycatch mortality is considered to be already reflected in the survivorship parameters utilized, models project stable or slightly increasing populations of the black-footed albatross (Wiese and Smith 2003, p. 24; Arata *et al.* 2009, pp. 50–51).

We have evaluated the various predictive models for the black-footed albatross, and agree with Arata *et al.* (2009, p. 50) that the model of Lewison and Crowder (2003, entire) most likely overestimated bycatch impacts by adding mortality from fisheries bycatch on demographic parameters that already reflected bycatch impacts. This inadvertent doubling of the mortality rate from bycatch would have resulted in the projection of precipitous population declines for the species. We base our conclusion on the data from the Ocean Fisheries Program presented in Figure 4 of the report of Arata *et al.* (2009, p. 15), which shows significant levels of bycatch mortality of black-footed albatrosses from commercial fisheries occurring from the mid-1950s through the early 1990s. It follows that demographic parameters based on data collected during the mid-1970s, used by Lewison and Crowder (2003, p. 747) in their efforts, would have reflected ongoing levels of bycatch at that time.

Other models based on the assumption that bycatch mortality is already reflected in demographic data collected during this time period (and, therefore, did not incorporate further bycatch effects into simulations) project future black-footed albatross populations to be relatively stable or even slightly increasing in size under conditions present at the time of the analyses (Arata *et al.* 2009, pp. 46, 50–51; Wiese and Smith 2003, p. 35). Although stable, the results of these models also show that black-footed albatross populations are growing at less than their potential growth rate, most likely due to bycatch mortality (Arata *et al.* 2009, pp. 46, 50–51; Wiese and Smith 2003, p. 35). Because the models of Wiese and Smith (2003, entire) and Arata *et al.* (2009, entire) avoid double-counting mortality from fisheries bycatch, we consider them to provide the most reliable projections of population trends for the black-footed albatross.

All studies we examined acknowledged the vulnerability of the black-footed albatross to bycatch mortality, and all indicated that declines may occur in the future if bycatch levels are greater than estimated (*e.g.,* Arata *et al.* 2009, p. 47). At this point in time, however, we do not see any evidence that the black-footed albatross population is in decline, and current data suggest recent bycatch reduction measures have been effective in increasing survivorship (Arata *et al.* 2009, p. 65). Advances in avoiding seabird bycatch include methods such as the use of streamer lines, which are found to reduce incidental mortality of albatrosses by nearly 100 percent (Melvin *et al.* 2006, p. 4). Other seabird avoidance measures under evaluation include, but are not limited to, side setting, night setting, underwater setting, towing buoys, using heavier branch line weights, and dying bait (*e.g.,* Gilman *et al.* 2005, Table 1, pp. 40–41; Gilman *et al.* 2008, p. 12). Such measures are now required in most U.S. fisheries (some smaller vessels are exempted; for details, see the discussion under Factor D ''The Inadequacy of Existing Regulatory Mechanisms,'' below).

Although the conservation measures implemented thus far have been highly effective in reducing the incidental mortality of black-footed albatrosses (Arata *et al.* 2009, pp. 14, 46; Moore *et al.* 2009, p. 444; ACAP 2010, p. 12), great uncertainty surrounds the actual level of bycatch from international longline fisheries, and the true impact of those fisheries is currently unknown (Arata *et al.* 2009, p. 47). On the whole, however, the demonstrated effectiveness of current bycatch mitigation measures, where mandated, in conjunction with: (1) Indications that past models predicting severe declines may have inadvertently overestimated the impacts of fishery bycatch or operated under assumptions that are now known to be false; (2) analyses that show populations are collectively stable or increasing; and (3) recent modeling that projects no substantial decreases over the next 60 years if current mitigation measures remain in place (and assuming continuation of other conditions present in recent years), all lead us to the conclusion that black-footed albatross numbers are stable at present rangewide, in the Hawaiian Islands and in the Japanese Islands.

Summary of Factors Affecting the Species Throughout Its Range

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth 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; or

(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.

In considering those factors that might constitute threats, we must look beyond mere exposure of the species to the factor to determine whether the species responds in a way that causes actual impacts to the species. If there is exposure to the factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat, and we then attempt to determine how significant that threat may be. All species face some degree or source of threat. We consider a threat to be ''significant'' if that threat may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate. We require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act; that is, the species is presently in danger of extinction throughout all or a significant portion of its range (endangered), or is likely to become endangered within the foreseeable future (threatened).

In making this finding, we have considered and evaluated the best available scientific and commercial information, including information received in response to our 90-day finding (72 FR 57278, October 9, 2007) and received or acquired in response to

our August 26, 2009, notice (74 FR 43092) reopening the information collection period. Below we summarize the information regarding the status and threats to the black-footed albatross across the range of the species in relation to the five factors in section 4(a)(1) of the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

As with other members of the family Diomedeidae, black-footed albatrosses feed offshore or pelagically, and return to land only to breed. In this section, we describe and evaluate various conditions in relation to the present or threatened destruction, modification, or curtailment of the marine and terrestrial habitats and range of the black-footed albatross, including: Military activities; volcanic activity; natural gas development; invasive plant species; and conditions related to climate change, including sea level rise and coastal inundation, tropical storm frequency and intensity, impacts to marine productivity, and ambient temperature. Each of these topics is discussed in relation to the two breeding populations (Hawaiian Islands and Japanese Islands) that collectively constitute the entire breeding range of the species.

Military Activities

Historical occupation by armed forces on islands important to black-footed albatross breeding populations occurred during much of the twentieth century, mostly associated with World War II. Activities associated with warfare and development of military infrastructure throughout black-footed albatross breeding habitat, including the intentional modification of breeding habitat to reduce albatross nesting activity, negatively impacted albatross colony size in the past (Rice and Kenyon 1962b, p. 384). However, little information exists with which to deduce the original size of the black-footed albatross colonies on these islands because there were very few early quantitative studies.

Northwestern Hawaiian Islands. French Frigate Shoals and Midway, Kure and Johnston atolls all supported armed forces stations or sustained military activities during World War II (Rice and Kenyon 1962b, pp. 366–378). In addition to the obvious disruptive impact of active warfare during that time, black-footed albatross populations were severely diminished by the development of military bases that led to loss and degradation of nesting habitat and large-scale albatross eradication programs intended to reduce interference of the birds with aircraft operations (Arata *et al.* 2009, p. 17; ACAP 2010, p. 6). By 1996, management of nearly all of the Northwestern Hawaiian Islands was transferred to the jurisdiction of the Service, and active military impacts had ceased. The black-footed albatross' breeding sites on Midway Atoll National Wildlife Refuge (NWR), as well as Pearl and Hermes Reef; Lisianski, Laysan, Necker, and Nihoa islands; and French Frigate Shoals, which are part of the Hawaiian Islands NWR, are now all protected from human-related habitat modification or destruction because these islands are under the jurisdiction of the Service's NWR system.

The mission of the NWR System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration, of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (U.S. Fish and Wildlife Service (USFWS) 2009b). Management of Kure Atoll was transferred from the U.S. Coast Guard to the State of Hawaii in 1993. Breeding sites for the black-footed albatross on Kure Atoll are protected from human-related habitat modification or destruction because this atoll now is a State wildlife sanctuary and is managed by the Hawaii Department of Land and Natural Resources (HDLNR) for the conservation and protection of indigenous wildlife, including seabirds (Hawaii Administrative Rules Title 13, Subtitle 5, Part 2, Chapter 125, sections 1–7). Further military impacts to black-footed albatross breeding habitat are unlikely in light of the transfer of the military lands to the Service and State, as described above.

Future military activity on these lands is further constrained by the 2006 establishment of the Northwestern Hawaiian Islands Marine National Monument (renamed Papahanaumokuakea Marine National Monument (PMNM) in 2007), which encompasses all of the islands, atolls, reefs, shoals, banks, and seamounts from 50 mi (80 km) east of Nihoa Island to 50 mi (80 km) west of Kure Atoll, and waters 50 mi (80 km) on either side of the lands. The co-trustees of the area are the Department of the Interior through the Service; the Department of Commerce through the National Oceanic and Atmospheric Administration (NOAA); and the State of Hawaii through the HDLNR. PMNM management is also accomplished in coordination with the State Office of Hawaiian Affairs. Within the boundary of the PMNM are two National Wildlife Refuges: Hawaiian Islands NWR and Midway Atoll NWR; the State Seabird Sanctuary at Kure Atoll; the State Marine Refuge; and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Current uses are limited primarily to management activities by jurisdictional agencies, research, education, Native Hawaiian practices, a small-scale commercial bottomfishing and pelagic trolling operation, and a small number of recreational trips and visits to historical sites at Midway Atoll. Although military activities are not expressly prohibited within PMNM, the management regulations do require that all activities and exercises of the Armed Forces shall be carried out in a manner that avoids adverse impacts on monument resources and qualities, to the extent practicable and consistent with operational requirements (71 FR 51138; August 29, 2006). We have no reason to anticipate any active military operations within the PMNM.

Kaula Island and Lehua Island. Kaula Island has been under U.S. Navy control since 1965 and is still used for munitions training. In 1977, Kaula Island was designated a State Seabird Sanctuary by the State of Hawaii (U.S. Navy 2009, unpubl.). Currently the Navy uses the southeastern portion of the Kaula Island for inert ordnance and gunnery activities, and it was previously used as a practice range for air-to-surface and surface-to-surface weapons delivery. Black-footed albatrosses have been observed on Kaula Island as recently as 1998 (USFWS 2009a; U.S. Navy 2009, unpubl.), but the last breeding data collected from a 1993 survey reported a breeding population of only three pairs (ACAP 2010, p. 4). Because of concerns regarding bird-aircraft hazards and unexploded ordnance, access to the island for bird surveys or management has been denied (U.S. Navy 2009, unpubl.). Lehua Island is administered by the U.S. Coast Guard and managed by the State of Hawaii as a State Seabird Sanctuary. No current military activities occur on this island, and none are anticipated.

Japanese Islands. Torishima Island has been a protected national natural monument since 1965, when it was still under U.S. authority, and can be visited only by research scientists with special permission. In the Ogasawara Islands, Muko-jima is known to have been occupied during World War II by a Japanese garrison that presumably ''wiped out'' whole bird colonies for use as a food source (Austin 1949, pp. 290–291). The Senkaku Islands were used by the U.S. Navy as maneuver areas.

Following World War II, all of the western Pacific islands were controlled by the United States. However, in 1972, all of the islands were returned to Japan, although Taiwan and the People's Republic of China (China) both claimed sovereignty to the Senkaku Islands, and this is still under dispute (Senkaku Islands 2009).

Natural reoccupation or recolonization by black-footed albatrosses since World War II has occurred on Torishima Island, the Ogasawara Islands (Muko-jima Island and Haha-jima Island), and the Senkaku Islands (Arata *et al.* 2009, p. 39). The Ogasawara Islands are now part of Japan's Ogasawara National Park, and current protective management of the islands likely precludes future military activities.

In summary, significant military activity is not currently taking place anywhere within the range of the black-footed albatross, and we have no reason to anticipate any increase in future military activity. Therefore, military activity does not pose a threat to the black-footed albatross in relation to the present or threatened destruction, modification, or curtailment of its habitat or range rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Volcanic Activity

Within the nesting range of the black-footed albatross, volcanic activity in historical times is recorded only from Torishima Island, where a 1903 volcanic eruption occurred during the nonbreeding season for several species of albatrosses, so that the only apparent effect was to destroy part of their nesting habitat. By 1930, it was apparent that many birds had returned and were breeding on the island, as human harvesting of all the albatross species was resumed by settlers. The volcano erupted again in 1939, burying most of the former breeding grounds and making them uninhabitable for the birds. The main crater overflowed once more in 1941, closing the natural anchorage that had allowed free access to human hunters in the past. When visited in 1949, the island was described as ''birdless'' (Austin 1949, p. 289). The island was again naturally reoccupied by black-footed albatrosses subsequent to this eruption, growing from a count of 6 chicks in 1957 to 914 chicks by 1998 (H. Hasegawa, unpublished data, as cited in Cousins and Cooper 2000, p. 23). Volcanic activity on Torishima Island was last recorded in 2002, with volcanic ash and rock blanketing the central portion of the island. The following year, surveys resulted in an estimate of 2,150 breeding pairs of black-footed albatross on Torishima (ACAP 2010, p. 4), demonstrating that the breeding population was largely unaffected by this most recent event.

Given this history, it is likely that Torishima Island will continue to experience volcanic activity. The evidence from past events suggests that black-footed albatrosses may survive such an event, as they have in the past, since at any given time approximately 75 percent of the birds are at sea and, therefore, are likely to be absent at the time of a volcanic eruption or other catastrophic event (Finkelstein *et al.* 2010, p. 328). Past reoccupation of Japanese islands by black-footed albatrosses has occurred subsequent to volcanic events as well as recolonization following extirpation of colonies due to military activities during World War II. Therefore, if the nesting population should be eliminated from the island due to volcanic activity impacts on nesting habitat, as has apparently occurred in the past, the historical evidence suggests that natural reoccupation of the island is probable assuming no other substantial changes in present conditions. In addition, Torishima might also be recolonized by birds from the nearby Ogasawara Islands.

Some researchers have suggested this scenario to be unlikely as movement of black-footed albatrosses between colonies is typically low (*e.g.,* Finkelstein *et al.* 2010, p. 323). However, we believe natural reoccupation is likely, based on past evidence of several separate reoccupation events, although we acknowledge the population would likely suffer reduced productivity for several years following a catastrophic volcanic event. Torishima provides nesting habitat for 3.5 percent of the rangewide population and is the only nesting island for black-footed albatrosses with an active volcano. Most birds nesting on Torishima likely would be at sea if there were an eruption, and based on past history it is reasonable to assume the island would be reoccupied over time following any such event. Therefore, we conclude that volcanic activity does not pose a threat to the black-footed albatross in relation to the present or threatened destruction, modification, or curtailment of its habitat or range in the Hawaiian Islands, the Japanese Islands, or rangewide.

Natural Gas Exploration

Exploration for natural gas has recently become a potential issue for birds on the Senkaku Islands. A dispute, primarily between Japan and China but also including Taiwan, over the territorial jurisdiction of the Senkaku Islands has been ongoing since the summer of 1970 (Cheng 1973–1974, p. 221; Downs and Saunders 1999, p. 124). Although this dispute originated in 1945 following World War II, it escalated in the 1970s when potential undersea natural gas reserves off the continental shelf near the Senkaku Islands became an economic issue. However, there is no firm evidence that commercially exploitable petroleum reserves exist in the area (Downs and Saunders 1999, p. 124). Furthermore, it has been suggested that multinational petroleum companies have little interest in drilling near the Senkaku Islands because of difficult terrain, political uncertainty, existence of unexploded ordnance from use of the islands as a target range, and doubts about whether any reserves that might exist can be commercially exploited in viable terms (Downs and Saunders 1999, p. 124). Regardless of the outcome of the territorial dispute and the unlikely progress of gas exploration, we have no information to indicate that such development of natural gas resources in the area of the Senkaku Islands would potentially modify or destroy black-footed albatross nesting or foraging habitat. The black-footed albatross population of the Senkaku Islands comprises less than 0.1 percent of the rangewide population, and less than 2 percent of the breeding population of black-footed albatross in the Japanese Islands (56 breeding pairs; ACAP 2010, p. 4). Thus, even if such development were to occur and impact habitat on the Senkaku Islands, it would likely not pose a significant threat to the Japanese Islands population. It appears unlikely that gas exploration will occur in the Japanese Islands because: (1) There is no strong evidence that such resources exist; (2) commercial interest to develop these resources is weak, even if they were found to exist; and (3) sovereignty of the Senkaku Islands continues to be in dispute. Therefore, we conclude that natural gas exploration off the Senkaku Islands does not pose a threat to the black-tailed albatross in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, including across its entire range, in the Hawaiian Islands, or in the Japanese Islands.

Invasive Plant Species

Many plant species have been introduced to the Hawaiian Islands, and of these *Verbesina encelioides* (golden crown-beard) has been identified as the greatest threat to black-footed albatross

nesting habitat (Naughton *et al.* 2007, p. 12). *Verbesina encelioides* is well established on Kure Atoll, Midway Atoll, and Pearl and Hermes Reef, where it inhibits native plant growth (Shluker 1999, p. 4; Naughton *et al.* 2007, p. 17). It is a woody herb that forms tall, dense stands, which can reduce access to nesting habitat of ground-nesting birds, including the black-footed albatross. Dense growth of *V. encelioides* can entangle black-footed albatross chicks or prevent parents from locating and feeding chicks (Shluker 1999, p. 4; Flint 2010, pers. comm.). It also restricts windspeed at the nest sites, potentially reducing the ability of adult and juvenile birds to thermoregulate using convective cooling (Flint 2010, pers. comm.). The Service and the HDLNR have implemented programs to control and eradicate *V. encelioides* on Midway Atoll and Kure Atoll (Shluker 1999, pp. 4–7; Flint 2010, pers. comm.), where approximately 43 percent of the rangewide black-footed albatross population breeds (see Table 2). In 2003, the Service and the HDLNR increased efforts to reduce the extent and spread of this invasive plant on Midway Atoll, including hand-pulling, mowing, and herbicide application.

In addition to *Verbesina encelioides,* other nonnative plant species occur in the Northwestern Hawaiian Islands, including *Casuarina equisetifolia* (common ironwood), a nonnative tree that has been identified as a threat to ground-nesting seabirds on Midway Atoll (Naughton *et al.* 2007, p. 12). Like *V. encelioides,* the dense growth of *C. equisetifolia* around black-footed albatross nest sites can block the wind and thereby reduce the potential for convective cooling. Growing as they do in an area normally devoid of tall vegetation, these trees can potentially interfere with the flight of long-winged birds such as albatrosses. The trees also may break off or fall onto ground-nesting birds during wind storms; nesting Laysan albatrosses and chicks were killed on Midway in January 2011 by falling ironwood trees and flooding (ACAP 2011). *Casuarina equisetifolia* is also subject to a control program (Flint 2010, pers. comm.). Furthermore, the Papahanaumokuakea Marine National Monument Plan (PMNM Plan) has incorporated a nonnative species action plan to identify, control, eradicate, and avoid the introduction of new nonnative species to the PMNM (NOAA *et al.* 2008, pp. 201–214).

The number of birds nesting on Midway Atoll has been relatively constant since 1992 (USFWS, unpubl. data) and has increased each year between 1999 and 2005 (Arata *et al.* 2009, p. 36), so *V. encelioides* and *C. equisetifolia* as currently controlled do not appear to have significant negative impacts on the availability of black-footed albatross nesting habitat. Also, while standardized annual nest counts are not conducted on Kure Atoll and Pearl and Hermes Reef, a program to control *Verbesina* has been initiated on Kure Atoll (Flint 2010, pers. comm.). While uncontrolled growth of *V. encelioides* and *C. equisetifolia* would likely have negative impacts on habitat and thus possibly on the black-footed albatross population, based on the evidence from current control efforts, we anticipate these and expected future levels of control will continue to reduce and limit these impacts to the extent that these nonnative plants do not pose a significant threat to the black-footed albatross.

We found no information regarding nonnative plants within the nesting range of the black-footed albatross on the Japanese Islands, and have no evidence indicating that nonnative plants pose any threat to the black-footed albatross or its breeding habitat on the Japanese Islands.

Therefore, based on our evaluation of the best available scientific and commercial data, we conclude that invasive plants do not pose a significant threat to the black-footed albatross in relation to the destruction, modification, or curtailment of habitat or range of the species in the Hawaiian Islands, the Japanese Islands, or rangewide. In the section below, we further consider the potential spread of invasive plants in relation to conditions related to climate change.

Effects Related to Climate Change

The anticipated impact of climate change on black-footed albatross habitat, ecology, and life history in tropical and subtropical terrestrial and marine ecosystems is complex. In this section we begin with a general overview of climate change projections, followed by our evaluation of the potential response of the black-footed albatross to possible changes in their nesting and foraging habitat related to climate-related changes in sea level, coastal inundation, and storm events. We then consider changes in foraging habitat related to altered marine productivity that could occur in relation to climate change, and possible physical effects to the black-footed albatross related to changes in ambient temperatures.

Climate Change Overview

Consideration of the effects of climate change is a component of our analyses of species under the Act. Here we provide a brief overview of the general topic of climate change as a way of providing a broad context for the more detailed consideration that follows with respect to the black-footed albatross.

Described in general terms, ''climate'' refers to average weather conditions, as well as associated variability, over a long period of time (*e.g.* decades, centuries, or thousands of years). Climate variables most often described are temperature and precipitation, and the typical period for calculating the mean of these properties is 20 or 30 years. The term ''climate change'' thus refers to a change in the state of the climate (whether due to natural variability, human activity, or both) that can be identified by changes in the mean or variability of its properties and that persists for an extended period—typically decades or longer. (See Intergovernmental Panel on Climate Change (IPCC), 2007, pp. 30, 78, for technical definitions that are the basis for our description of these terms.)

Analyses of observed trends in climate demonstrate that climate change is occurring, as illustrated by examples such as an increase in the global mean surface air temperature (SAT) (''global warming''), substantial increases in precipitation in some regions of the world and decreases in other regions, and increases in tropical cyclone activity in some oceanic areas (IPCC 2007, p. 30). Because relatively small but sustained changes in temperature can have substantial direct and indirect effects on natural processes and human populations, temperature is one of the most widely used indicators of climate change. Based on extensive analyses, the IPCC concluded that warming of the global climate system over the past several decades is ''unequivocal'' (IPCC 2007, p. 2). These changes in global climate are affecting many natural systems (see IPCC 2007, pp. 2–4, 30–33 for global and regional examples, and Global Climate Change Impacts in the United States (GCCUS) 2009, pp. 27, 79–88, for examples in the United States).

Analyses of natural variability in climate conditions and the effects of human activities led the IPCC to conclude that most of the increase in global mean surface air temperature that has been observed since the mid-20th century is very likely due to the observed increase in greenhouse gas (GHG) concentrations related to human activities, particularly emissions of CO_2 from fossil fuel use (IPCC 2007, p. 5 and Figure SPM.3). Extensive analyses point to continued changes in climate and considerable efforts are occurring to make projections of the magnitude, rate,

and variability of future changes and to understand the mechanisms underlying them, including the role of greenhouse gases.

Projections by the IPCC in 2007 for climate change for the earth as a whole and for broad regions were based on simulations from more than 20 Atmospheric-Ocean General Circulation Models used in conjunction with various scenarios of different levels and timing of greenhouse gas emissions (Christensen *et al.* 2007, pp. 847–917; Meehl *et al.* 2007, pp. 753–796; Randall *et al.* 2007, pp. 596–599). The emissions scenarios were developed in the late 1990s and described in the Special Report on Emissions Scenarios (SRES) published in 2000 (Carter *et al.* 2007, p. 160, and references therein). The scenarios span a broad range of potential GHG emissions over the coming decades based on a wide spectrum of economic, technological, and human demographic possibilities for the planet; the SRES made no judgment as to which of the scenarios are more likely to occur, and although they cover a very broad range it is possible that emissions could be higher or lower than the range covered by the scenarios.

The IPCC's projections of change in global mean warming (global annual mean surface air temperature (SAT)) and how they differ over time across emissions scenarios as compared to the observed SAT from1980–1999, are described by Meehl *et al.* (2007, pp. 760–764). Several key points emerge from their projections. First, the projected changes in magnitude of warming are similar under all emissions scenarios to about 2030 and to some degree even to about mid-Century although more divergence is evident then, and the divergence continues to increase over time, *i.e.,* in the near-term the projections differ by only 0.05 °C (0.09 °F), but by the last decade of the century the difference across scenarios is 1.6° C (0.9 ° F); as noted by Cox and Stephenson (2007, p. 208), total uncertainty in projected decadal mean temperature is lowest 30 to 50 years in the future. Second, the magnitude of projected warming increases across each scenario, including the lowest emission scenario. Under the lowest emission scenario, annual man SAT change is 1.19 ° F (0.66 °C) for 2011–2030 and 2.32 ° F (1.29 ° C) for 2046–2065 (See Meehl *et al.* 2007, p. 763, Table 10.5). Third, the pattern of projected increases is relatively consistent whether considering the average across all models for a given scenario or the projections from the individual models, including consideration of ± one standard deviation around the mean projection for each scenario (see Meehl *et al.* 2007, pp. 762–763, Figures 10.4 and 10.5, and Table 10.5). Thus although differences in projections reflect some uncertainty about the precise magnitude of warming, we conclude there is little uncertainty that warming will continue through the end of century, even under the lower emissions scenario. We note also that more recent analyses using additional global models and comparing other emissions scenarios have resulted in projections of global temperature change that are similar to those reported in 2007 by the IPCC (Prinn *et al.* 2011, pp. 527, 529).

While projections from global climate model simulations are informative, their resolution is coarse and it is helpful to have higher-resolution projections that are more relevant to the spatial scales used for various assessments involving climate change. Various methods to ''downscale'' climate information have been developed to generate projections that are more specific to regional or relatively local areas (see Glick *et al.* 2011, pp. 58–61 for a summary description of downscaling). In conducting status assessments of species, the Service uses downscaled projections when they are the best scientific information available regarding future climate change.

In the case of marine areas, however, adequate procedures for downscaling are still under development, thus global projections for various conditions related to climate change (*e.g.,* sea and land surface temperatures, precipitation, storm frequency and intensity, marine productivity, and ocean acidification) are used for marine areas and small islands within them, including the Northwest Pacific Islands. Efforts are currently underway by the Pacific Islands Climate Change Cooperative and climate modelers at the University of Hawaii to develop regional models that will increase our understanding of climate change effects specific to the Pacific Islands. However, this information is not yet available to us. In most cases, therefore, global projections of future climate conditions constitute the best available scientific information available for purposes of our analyses for this finding.

Projections of Sea Level Rise

On a global (eustatic) scale, the main factors currently contributing to sea level rise are thermal expansion of warming ocean water, water input to oceans from the melting of ice sheets, glaciers, and ice caps, and the addition of water from terrestrial systems (United Nations (UN) 2009a, p. 26). The IPCC's model-based projections of global average sea level rise for the last decade of this century, as compared to the average for 1980–1999, ranged from 0.59 ft to 1.94 ft (0.18 m to 0.59 m) across various emissions scenarios (Meehl *et al.* 2007, p. 812). This projection includes contributions from ocean thermal expansion, melting of glaciers and ice caps, and limited contributions from ice sheets; however, it did not include the possible contribution from relatively rapid melting of the Greenland and West Antarctic Ice Sheets. Several recent scientific publications have addressed problems that the IPCC's approach had in accounting for the observed level of sea level rise in the late 20th and early 21st centuries, and yielded new projections which reflect the possibility of rapid contributions from ice sheet dynamics beyond surface melting (see summaries by Church *et al.* 2010, Rahmstorf 2010, and Nicholls *et al.* 2011). Table 3 gives the ranges from these recent projections, along with the range given by the IPCC for purposes of comparison.

TABLE 3—PROJECTED RANGES OF GLOBAL AVERAGE SEA LEVEL RISE FOR THE 21ST CENTURY, INCLUDING THE IPCC PROJECTION (MEEHL *et al.* 2007) FOR COMPARISON

Projected range of global mean sea level rise feet (meters)	Source
0.59–1.94 ft, (0.18–0.59 m)	Meehl *et al.,* 2007 (IPCC), pp. 820–822,Table 10.7.
2.6–6.6 ft, (0.8–2.0 m)	Pfeffer *et al.,* 2008, p. 1340.
2.46–6.23 ft, (0.75–1.90 m)	Vermeer & Rahmstorf 2009, p. 21530.
2.36–5.25 ft, (0.72–1.60 m)	Grinsted *et al.,* 2010, pp. 469–470.
2.0–5.3 ft, (0.6–1.6 m)	Jevrejeva *et al.,* 2010, L07703, p. 4.
3–4 ft (0.9–1.2 m)	(GCCUS) 2009, p. 25.

As shown in Table 3, the ranges of recent projections of sea level rise all indicate substantially higher levels than the projection by the IPCC in 2007. They also show a much larger difference (approximately 3 to 4 ft (0.9 to 1.2 m)) from the low to the high ends of the ranges, which indicates the magnitude of global mean sea level rise at the end of this century is still quite uncertain.

In their review of sea level rise projections, Nicholls *et al.* noted that the earlier acceleration of some of the southeast Greenland glaciers had reversed by 2006, adding to uncertainty about whether the recent rates of mass loss are temporary and the extent to which they should be extrapolated into the future; they concluded that the upper part of the projected ranges of global sea level rise are possible but not likely to occur (Nicholls *et al.* 2011, pp. 165, 168). Lowe and Gregory (2010, p. 4) similarly concluded that global mean sea level rise by the end of the century is ''almost certain to be below two metres and that there is currently very little evidence to suggest that increases at the top of this range are likely.'' Church *et al.* (2010, p. 411) reported that new information from satellite-based data for 2002–2009 indicates an accelerating contribution to sea level rise from both the Greenland and Antarctic ice sheets, but that ''improved understanding of the processes responsible for ice-sheet changes are urgently required to improve estimates of the rate and timing of 21st-century and longer-term sea-level projections.'' Similarly, Nicholls and Cazenave (2010, p. 1519) state ''The extent of future SLR [sea level rise] remains highly uncertain—more so than in 2007, when the IPCC AR4 was published'' and they call for additional analyses to focus on understanding ice sheet instabilities and other processes drive sea level rise.

Viewed from broad regional and particularly more local perspectives, the picture is further complicated by the fact that sea level rise is not uniform around the world and deviations from the observed global mean of sea level rise have been substantial in some areas. The fact that future sea level change will not be the same everywhere has been characterized by Milne *et al.* (2009, p. 471) as ''one of the few statements that can be made with certainty.''

The considerable uncertainty about the magnitude of global average sea level rise by the end of the century is additionally complicated by the variability in sea level change observed in different parts of the world. This includes differences in open oceans, such as non-uniform changes in temperature and salinity and differences in ocean circulation patterns; the contributions of various factors to relative sea level change at regional scales are not fully understood and different contributions may dominate depending on the geographic location (Bindoff *et al.* 2007, p. 409). A recent analysis aimed at providing a better understanding of sea level change at regional scales indicates that the entire range of the black-footed albatross is within a very broad ocean region where sea level rise by the end of this century is projected (under each of three emissions scenarios) to be higher than the global mean, and Hawaii is expected to have slightly higher rise than the global average (Slangen *et al.* 2011, pp. 9–15). This analysis included numerous assumptions (including assumptions about changes in ice mass dynamics) and the authors made the point that the absolute values presented in their study required careful interpretation (Slangen *et al.* 2011, p. 16).

Different rates of sea level rise observed locally add further complexity to the evaluation of this factor. Specifically, Honolulu, on the island of Oahu, and Hilo, on the island of Hawaii, have had different observed trends in sea level rise since the mid-1940s, although the relative differences in the rate of sea level rise between these Hawaiian islands have been more limited since the mid-1970s; these differences may be related to variations in both space and time in land motion (subsidence, uplift), and it may be related to interdecadal variations in upper ocean temperatures (Caccamise *et al.* 2005, L03607, entire). Regardless of the cause(s) of the difference, this information adds to our caution in interpreting global sea level rise projections in our analysis of potential effects on the black-footed albatross and its habitat at a more localized scale.

In addition to reporting a projected range of sea level rise for the end of the century, Jevrejeva *et al.* (2010) also reported projections for the mid-century. In contrast to the relatively divergent range projected for 2100 (2.0–5.3 ft (0.6–1.6 m)), they found relatively close agreement in projected sea level rise across various emissions scenarios until about 2050 using the six emissions scenarios used by the IPCC, with projections ranging from a low of approximately 0.98 ft (0.3 m) to a high of 1.8 ft (0.55 m) (Jevrejeva *et al.* 2010, p. 3, Figure 2).

As discussed above, results for models projecting sea level rise further than mid-century become increasingly divergent, and this is particularly true with regard to the maximum bounds of projected sea level rise. Furthermore, with regard to evaluating the possible upper bounds of projected sea level rise over the next century, we considered the statements of both Nicholls *et al.* (2010, p. 168) and Lowe and Gregory (2010, p. 43) that the probability of rises at the high end of the spectrum are very low. Nicholls *et al.* (2010, p. 174) concluded that, although a sea level rise between 1.6 and 6.6 ft (0.5 and 2.0 m) is not an implausible range, ''owing to our poor understanding of the underlying processes driving climate-induced sea-level rise, we cannot associate any likelihood with this range, and we conclude that rises above 0.5 m and especially 1 m by 2100 are possible, rather than inevitable.''

As there is so much uncertainty surrounding global sea level projections, particularly at the upper bounds at the end of the century, and this is further complicated by uncertainty about regional and local divergences from the global mean, we believe it is more appropriate to focus our analysis on less variable projections over a somewhat shorter timeframe. Therefore, we evaluated what we consider to be reasonable approximate projected levels of sea level rise for the habitat of the black-footed albatross, based on consideration of the global estimates described above, over three time intervals: For the next 10–20 years we use an estimate of 0.5–1.0 ft (0.1–0.3 m); for 30–40 years we use 1.4–1.9 ft (0.4–0.6 m); and for 50 years we use 2.4 ft (0.7 m) (see USFWS 2011b, unpubl., for additional details). While we recognize that several models project an accelerated rate of sea level increase later in the century (*e.g.,* Vermeer and Rahmstorf 2009, Figure 6, p. 21531), we determined that, in light of the significant variability in projections following mid-century, for the purposes of this status evaluation using a linear projection of sea level rise (see Baker *et al.* 2006, pp. 5–6) and time-intervals up to mid-century is a reasonable approach. Note also that the level we use for 50 years from now, 2.4 ft (0.7 m), is conservative in that it is higher than the mid-century projection by Jevrejeva *et al.* (see above), and in fact is very close to the end of century level (0.8 m) described as ''plausible'' by Pfeffer *et al.* (2008, p. 1342), and even closer to the low ends of the ranges projected at 2100 by Vermeer and Rahmstorf (2009, p. 21530) and Grinsted *et al.* 2010, pp. 469–470. We believe this approach is reasonable and provides a reliable basis for our analysis.

Sea Level Rise and Coastal Inundation

There is very little existing information in the scientific literature

on how projected sea level rise will affect the islands currently used by black-footed albatross for nesting, as topographical information for these islands in most cases is extremely limited and, as noted above, regionally specific models of sea level rise for the area are still under development (*e.g.,* Klavitter 2010, pers. comm.). A rigorous geomorphological coastal analysis is needed to fill this information gap. In a limited study of several of the Northwestern Hawaiian Islands, Baker *et al.* (2006, p. 2) noted this lack of spatial data, and developed models that can be used to estimate the proportional rate at which land area may disappear in the Northwestern Hawaiian Islands, based on cumulative elevation data (Baker *et al.* 2006, p. 6, Figure 3).

As only maximum elevation data are available for most of these islands, these researchers collected elevation data from three locations: Lisianski Island, Pearl and Hermes Reef (the islets of Southeast, Seal-Kittery, Grass, North, and Little North), and French Frigate Shoals (including the islands of East, Gin, Little Gin, and Trig). We did not use the projections of surface area lost presented by Baker *et al.* (2006) in their Table 1 since those estimates were developed using the older IPCC 2001 projections of sea level rise. However, based on their cumulative elevation models (Baker *et al.* 2006, Figure 3), we estimated the effects of the projected sea level rise on each of the islands over the three time intervals (Table 4).

Note that detailed topographical information is not available for the island of Midway Atoll or Laysan Island, which support the two largest colonies of black-footed albatrosses in the world, and these islands were not included in the analysis of Baker *et al.* (2006). However, results for Laysan Island are likely to be similar to those for Lisianski Island, as detailed below.

TABLE 4—PROJECTED EFFECTS OF SEA LEVEL RISE ON THE LAND AREA OF ISLANDS SUPPORTING NESTING BLACK-FOOTED ALBATROSS AT 10–20, 30–40, AND 50 YEARS IN THE FUTURE, BASED ON PASSIVE FLOODING AND THE CUMULATIVE ELEVATION MODELS OF BAKER *et al.* 2006

[We assumed islands greater than 165 ft (50 m) in maximum elevation would retain at least 95% of their land area above sea level]

Island	Maximum elevation	Island area	Number of breeding pairs of black-footed albatross (survey year)	Percent of northwestern Hawaiian islands breeding population	Percent of Japanese islands breeding population	Percent of world breeding population	10–20 years—proportion of land area remaining above 0.5–1.0 ft (0.1–0.3 m); range for individual islets is in parentheses	30–40 years—proportion of land area remaining above 1.4–1.9 ft (0.4–0.6 m); range for individual islets is in parentheses	50 years—proportion of land area remaining above 2.4 ft (0.7 m); range for individual islets is in parentheses
Northwestern Hawaiian Islands									
Kure Atoll	8–20 ft (2.4–6.1 m)	213 ac (87 ha)	3,486 (2010)	5.4	NA	5.2	Data not available.	Data not available.	Data not available.
Midway Atoll	12 ft (3.6 m)	1,532 ac (624 ha)	25,581 (2010)	40.0	NA	38.1	Data not available.	Data not available.	Data not available.
Pearl and Hermes Reef.	≈ 9.8 ft (≈ 3 m)	88 ac (36 ha)	6,116 (2003)	9.6	NA	9.1	99–88% (range 99–55%).	82–72% (range 82–30%).	67% (range 79–25%).
Lisianski	≈ 40 ft (≈ 12.9 m)	391 ac (159 ha)	2,126 (2006)	3.3	NA	3.2	99%	98–99%	97–98%.
Laysan [1]	≈ 40 ft (≈ 12.9 m)	1,000 ac (407 ha)	22,272 (2010)	34.8	NA	33.1	99%	98–99%	97–98%.
French Frigate Shoals.	8–12 ft (2.4–3.6 m)	67 ac (27 ha)	4,309 (2009)	6.7	NA	6.4	98–86% (range 98–75%).	82–74% (range 87–50%).	69% (range 80–40%).
Necker	276 ft (84 m)	45 ac (18 ha)	112 (1995)	0.2	NA	0.2	> 95%	> 95%	> 95%.
Nihoa	903 ft (275 m)	171 ac (70 ha)	1 (2007)	0.0	NA	0.0	> 95%	> 95%	> 95%.
Offshore Main Hawaiian Islands									
Kaula	165 m	64 ha (158 ac)	3 (1993)	0.0	NA	0.0	> 95%	> 95%	> 95%.
Lehua	214 m	116 ha (284 ac)	25 (2007)	0.0	NA	0.0	> 95%	> 95%	> 95%.
Japanese Islands									
Torishima Island	1,293 ft (394 m)	1,184 ac (479 ha)	2,150 (2003)	NA	67.5	3.2	> 95%	> 95%	> 95%.
Senkaku Islands	1,257 ft (383 m)	1,446 ac (633 m)	56 (2002)	NA	1.8	0.1	> 95%	> 95%	> 95%.
Ogasawara									
Muko-jima Retto	Not available	1,631 ac (664 ac)	967 (2006)	NA	30.4	1.4	> 95%	> 95%	> 95%.
Haha-jima Retto	1,525 ft (462 m)	6,805 ac (2,770 ha)	11 (2006)	NA	0.3	0	> 95%	> 95%	> 95%.

[1] Land area estimates assume similar conditions to Lisianski, based on similar elevation and topography.

Tern Island was estimated to comprise about 66 percent (57 ac (23 ha)) of the terrestrial area of French Frigate Shoals (Arata *et al.* 2009, p. 76). Originally the island was only about 10 ac (4 ha) in size but was expanded in 1942 to 57 ac (23 ha) (Amerson 1971, p. 12). Sand and Eastern islands, the two main islands at Midway Atoll, have also

undergone extensive human modifications, and are approximately 12 ft (3.6 m) above sea level. All three islands (Tern, Sand, and Eastern) transition from sea level to maximum elevation over a few meters and are relatively flat across their full expanse to accommodate aircraft runways on each island. How much projected levels of sea level rise over the next 10 to 20 years (0.5–1.0 ft (0.1–0.3 m)), 30 to 40 years (1.4–1.9 ft (0.4–0.6m)), and 50 years (2.4 ft (0.7 m)) will impact black-footed albatross nesting habitat on these islands is unknown in the absence of more detailed geomorphological information, but given their relatively low elevation, sea level rise may result in some loss of nesting habitat for black-footed albatrosses.

It is also possible, however, that there will be no net loss of land area depending on relative rates of beach erosion in some (seaward) areas and beach deposition in other (lagoon-side) areas that may occur, as has been observed in other Pacific atoll islands in response to rising sea level (Webb and Kench 2010, p. 234). Webb and Kench (2010, entire) studied 27 Central Pacific islands using a combination of historical aerial photography and remote sensing imagery from years spanning from 1943 through 2006 (the timeframe of analysis for each island differed, depending on the availability of imagery, but ranged from 19 to 61 years). Despite the expectation that such islands would diminish in size due to ongoing and future sea-level rise, they found that with a historical sea level rise of 0.08 in (2 mm) per year over the period studied (roughly 4.8 in (12 cm) maximum), the terrestrial area of 43 percent of the 27 atoll islands studied remained stable while another 43 percent actually increased in size by 3 to 30 percent (Webb and Kench 2010, p. 241). Only 14 percent of the atoll islands showed a loss of 3 to 10 percent of area. The observed adjustment for 65 percent of these atoll islands was a net lagoon-ward migration, but also included island migration along the atoll reef. Overall, these atoll adjustments added 156 ac (63 ha) of coastal land area to these islands.

In the Northwestern Hawaiian Islands, sediment transport has resulted in the submersion of Whale-Skate Island in French Frigate Shoals and has accreted island area at Spit Island (Midway Atoll), Seal-Kittery Island (previously 2 islets), and North Island at Pearl and Hermes Reef (Amerson *et al.* 1974, pp. 8 and 11, comparing reported islet area to current estimates). These data, and taking into consideration the results reported by Webb and Kench (2010, see above) for atoll islands elsewhere, indicate projected sea level rise will likely change the physical shape and position of Tern, Sand, and Eastern islands and may reduce or possibly increase the size of these atoll islands. However, it is also important to note that we do not have information to indicate how these processes may work under potentially accelerated rates of sea level rise. Any such changes, however, whether positive or negative in terms of total land area, are likely to occur gradually over many years, giving black-footed albatrosses a long period of time to potentially adjust their breeding locations. Tern and East Islands each support just under half of the black-footed albatross breeding pairs at French Frigate Shoals (Arata *et al.* 2009, p. 38, Figure 14).

Based on the cumulative elevation model developed by Baker *et al.* (2006, p. 6, Figure 3) East Island will lose about 2 to 10 percent of its land area to 0.5–1.0 ft (0.1–0.3 m) sea level rise in 10 to 20 years, 12 to 19 percent of its land area to 1.4–1.9 ft (0.4–0.6 m) sea level rise in 30 to 40 years, and roughly 20 percent of its current land area to a 2.4 ft (0.7 m) rise in sea level in 50 years. Potential losses of land area at the smaller islets of French Frigate Shoals are projected to be greater (Table 4, this document), but no estimates were available for Tern Island, where relatively large numbers of black-footed albatrosses breed. We estimated that, collectively, the islets of French Frigate Shoals will have roughly 86 to 98 percent of terrestrial area remaining after 10 to 20 years, 74 to 82 percent remaining after 30 to 40 years, and 69 percent after 50 years (Table 4, this document).

We note Baker *et al.* (2006) do not take into account geomorphological features that can alter sea level rise impacts, as shown by Webb and Kench (2010, p. 241). All of these islands may change shape, size and position through erosion and accretion, such that future land areas may be larger or smaller than projected due to sea level rise alone. The islets of Pearl and Hermes Reef support 10 percent of the world black-footed albatross breeding pairs and comprise some of the lowest elevation areas used for nesting by the species. Collectively, we estimate that these islets will retain roughly 88 to 99 percent of their land area in 10 to 20 years, 72 to 82 percent of their land area over 30 to 40 years, and 67 percent of their land area in 50 years (Table 4, this document). This does not take into account potential changes in shape, size, or position that may occur due to erosion and accretion, as demonstrated by Webb and Kench (2010, p. 241) for island atolls elsewhere, but due to their small size and low elevation we consider these islets to be some of the most vulnerable to sea level rise and may be a potential loss of nesting habitat for the black-footed albatross.

Lisianski Island (currently supporting 3.2 percent of world black-footed albatross breeding pairs) is one of the larger Northwestern Hawaiian islands at 391 acres (159 ha) in size. We estimated that Lisianski would still have 99 percent of its terrestrial area over the next 10 to 20 years, 98 to 99 percent over 30 to 40 years, and about 97 percent of its terrestrial area in the face of a 2.4-ft (0.7 m) rise in sea level in 50 years (based on Baker *et al.* 2006, p. 6, Figure 3; see Table 4, this document). Laysan Island (currently supporting 35 percent of world black-footed albatross breeding pairs) has a maximum elevation that is the same as Lisianski Island (about 40 ft (13 m)) and, like Lisianski, has a large central depression (a lake on Laysan but not on Lisianski) surrounded by higher elevation sandy ridges (Macdonald *et al.* 1990, pp. 480–481). In addition, at approximately 1,000 ac (407 ha) in size, Laysan is substantially larger than Lisianski (391 ac; 159 ha). Presuming a similar island atoll geomorphology, sea level rise will affect a limited area of Laysan Island, most likely similar to the projections for Lisianski. As discussed above, this analysis does not consider geomorphological features that can alter early sea level rise impacts, as shown by Webb and Kench (2010, p. 241). Their information indicates that levels of sea level rise expected over the next 50 years will likely change the shape and position of Lisianski and Laysan Islands, and that processes of erosion and accretion may either reduce or even increase the size of these islands. All of these changes are likely to occur gradually over many years.

Kure Atoll (which supports 5.2 percent of world black-footed albatross breeding pairs) was not included in Baker *et al.*'s projections of sea level rise impacts on the Northwestern Hawaiian Islands. Kure Atoll has a maximum elevation of approximately 24 ft (7.5 m; Arata *et al.* 2009, p. 75). Impacts from sea level rise at Kure Atoll are likely to be similar to those discussed for these other atoll areas, although Kure Atoll has greater land area and maximum elevation than the islets of Pearl and Hermes Reef.

While black-footed albatrosses are typically characterized as nesting on the sandy beaches of low atoll islands, there are several colonies that currently nest upslope on high-elevation islands and

do not utilize shoreline nesting sites: Toroshima (2,150 breeding pairs), Senkaku (56 breeding pairs), Ogasawara (Hahajima Island) (11 breeding pairs), Necker (112 breeding pairs), Nihoa (1 breeding pair), Kaula (3 breeding pairs) and Lehua (25 breeding pairs) (Arata *et al.* 2009, p. 3, Figure 1). Nesting on these islands occurs well above sea level in volcanic substrates or on the top of hill and upland slopes (Clapp and Kridler 1977, p. 36; Clapp *et al.* 1977, p. 44; Cousins and Cooper 2000, p. 5; Pitman and Ballance 2002, p. 13). Due to their topography and elevation, we do not expect these islands and their breeding populations of black-footed albatross to be affected by anticipated levels of sea level rise.

As noted earlier, detailed, spatially-explicit data specific to the breeding islands of the black-footed albatross are limited or nonexistent. Although the USGS is currently studying the potential impacts of sea level rise on the Northwestern Hawaiian Islands, the results of this research was not available in time for our status assessment. Based on the best scientific information available to us, we can make rough approximations of the land area that may remain under various sea level rise scenarios on these islands, but we do not have detailed spatial information that would enable us to determine how much of the land area that would be lost currently serves as nesting habitat for the black-footed albatross. However, given that black-footed albatrosses on the low-lying islands and atolls of the Northwestern Hawaiian Islands select sites in sandy habitats generally close to the shoreline for nesting, it is reasonable to assume that much of the initial losses of land area would constitute potential or current nesting habitat. This assumption does not apply to black-footed albatrosses that nest upslope on steep, high islands, such as Necker, Nihoa, or the Japanese Islands. Therefore, we must consider the potential effects of the loss of an unknown amount of current shoreline nesting habitat on the black-footed albatross, based on estimated losses of land area and related considerations.

For those black-footed albatrosses that do nest near the shoreline, inundation by high surf currently destroys some nests, and high winds bury nests and kill eggs or chicks and sometimes incubating adults, although the proportion of nests affected each year has not been quantified (Flint 2009a, pers. comm.). Winter storms and the associated high tides and high winds were identified as a major cause of black-footed albatross nest failure on Kure Atoll in the 1960s (Woodward 1972, p. 93). Recently on French Frigate Shoals, the smaller islands of Little Gin and Trig were washed over while adult black-footed albatrosses were incubating eggs (Flint 2009a, pers. comm.). Also on the larger islands of Tern and Eastern, black-footed albatross nests on the islands' northern sides that were exposed to the larger winter swells were often inundated or washed away (Flint 2009a, pers. comm.). During the 2008 breeding season, all of the nests, eggs, and chicks on Tern Island were washed away by high surf (Flint 2009a, pers. comm.). In addition, severe events may happen on occasion, as in the estimated loss of more than 20,000 black-footed albatross chicks from the Northwestern Hawaiian Islands in the aftermath of the March 2011 tsunami generated off the coast of Japan (Flint 2011b, pers. comm.). Such events, although random and unpredictable in occurrence, are not unexpected, and have presumably occurred throughout the history of the species (*e.g.,* see Cousins and Cooper 2000, pp. 115–117). Whether such events may potentially increase in frequency as a potential effect of climate change is an important consideration; however, at this point in time we do not have sufficient information to quantify the probability of such occurrences for this region (see ''Storm Frequency and Intensity,'' below). That most adults survive such events, and population viability in this species is more dependent on adult than juvenile survivorship, enables the species to persist despite occasional severe impacts to productivity or recruitment.

Reproductive success may also be affected in the event birds are forced to relocate their nesting sites due to high surf or winds. For example, black-footed albatrosses whose nest sites were lost on Midway Atoll because of habitat modification related to military activity, both during and immediately following World War II, were found in later years breeding at a different location on the atoll, though it is likely that they lost at least 1 year of breeding due to the displacement (Cousins and Cooper 2000, p. 44). More recently, black-footed albatrosses forced to relocate due to construction activities on Midway were later found nesting elsewhere in the atoll, although they similarly likely lost a year of breeding as a consequence (Flint 2009a, pers. comm.) If a nest site is destroyed, the birds may have difficulty in pairing up with the same mate. In general, mate loss in black-footed albatrosses can cause adults to miss up to 5 years of breeding before forming a new pair (COSEWIC 2007, p. 33). Increased storm surges or other events due to anticipated climate change may therefore result in some decreased productivity for black-footed albatrosses, especially those nesting on very low-lying islands; however, the actual potential extent of this impact would be purely speculative at this time.

A key uncertainty in our evaluation of the effects of sea level rise is the behavioral response of breeding black-footed albatrosses to the possible future inundation of their current nesting sites. The strong nest site fidelity of black-footed albatrosses is an important consideration in this regard. As described in the *Life History* section, above, more than 99 percent of black-footed albatrosses breed on the island where they hatched (Rice and Kenyon 1962a, p. 532), and they construct their nests every year on almost the same site. On Tern Island, black-footed albatrosses were found to nest within 16 ft (5 m) of the previous year's nest (Cousins and Cooper 2000, p. 44). Data from a 2-year study of the closely related Laysan albatross on Midway Atoll showed nests to be within 20 ft (6 m) of the previous year's nest site, and over 50 percent of nests were within 4 ft (1.3 m) (Rice and Kenyon 1962a, p. 533).

In an experimental study, adults of the closely-related Laysan albatross generally responded to displacement of their chick from the nest site by not feeding their chick unless it was within 7 ft (2 m) of the nest site (Rice and Kenyon 1962a, pp. 534–536). That is, adults are oriented on the location of the nest, not on the location or identity of the chick. Based upon this information, an unknown number of black-footed albatross nest sites may be lost each breeding season due to increasing high tides or storm surge from sea level rise, and chicks that get displaced from their nest site may die because their parents do not feed them. Offsetting this potential impact, however, is the availability of additional nesting habitat for black-footed albatrosses and the possibility that birds will relocate their nest sites to more suitable (higher-elevation, inland) habitat over time.

Although black-footed albatrosses do predominantly nest on sandy beaches near the shoreline, there is apparently some behavioral flexibility in nest site selection by the species, as they are found nesting further inland in vegetated areas on Midway and French Frigate Shoals, including amongst bushes, in clearings among introduced ironwood trees, and in grassy areas (Awkerman *et al.* 2008). On steep, volcanic high-elevation islands, such as Necker, Nihoa, and Japanese Islands such as Torishima, black-footed

albatrosses nest high upslope in grassy or rocky areas (Cousins and Cooper 2000, p. 32; see, for example, *http://www.mnc.toho-u.ac.jp/v-lab/ahoudori/Photo/photo03/68.html*).

Although in some cases black-footed albatrosses have exhibited a reluctance to move, despite repeated nest failures, there are other examples of breeding pairs relocating, as for example cited above at Midway Atoll in response to displacement from military activities or construction (Arata *et al.* 2009, p. 39; Flint 2009a, pers. comm.). On Torishima Island, black-footed albatrosses established new breeding colonies following volcanic eruptions in 1903, 1941, and 2002 (see ''Volcanic Activity,'' above). In addition, anecdotal evidence suggests that black-footed albatrosses have moved to other islands as smaller islands have disappeared or become overwashed, as suggested at Tern Island by Cousins and Cooper (2000, p. 32) and at French Frigate Shoals (ACAP 2010, p. 7). The recent increase in breeding birds at French Frigate Shoals may be due to the redistribution of black-footed albatrosses that once nested on the island of Whale-Skate, which was lost entirely to erosion from winter storms and sea level rise in 1997 (ACAP 2010, p. 7); however, this supposition is apparently based on the circumstantial timing of the increase on French Frigate Shoals following the disappearance of Whale-Skate, and is not supported by observations of banded birds.

Whether established breeders would move to new nest sites is a major source of uncertainty in our evaluation. The question of whether birds just coming into breeding age would establish new colonies, assuming their natal sites may be lost, is less uncertain. Despite their normally high degree of philopatry, we do have evidence that some black-footed albatrosses banded as nestlings have become breeders on other than their natal islands (Woodworth 1972, p. 96). For example, of 124 banded nestlings, mostly from Midway Atoll, 22 were later observed breeding on Kure Atoll (Woodworth 1972, p. 96). Other movements of smaller numbers of black-footed albatrosses between their natal and breeding sites were observed between Pearl and Hermes Reef, French Frigate Shoals, and Kure Atoll as well (Woodworth 1972, p. 96). Although most movements of black-footed albatrosses between breeding colonies have been over a relatively small range (Woodworth 1972, pp. 96, 109), there is evidence of quite long-range movements from the recent observations of black-footed albatrosses prospecting for nesting sites on the islands of Guadalupe and San Benedicto off the coast of Mexico (Awkerman *et al.* 2008). Colonization of new islands and range expansion, including the establishment of breeding colonies in the eastern Pacific on the islands of Guadalupe and San Benedicto, has also been observed in the related Laysan albatross (Young *et al.* 2009, p. 722), a bird that exhibits a similarly high degree of natal philopatry, suggesting it is not unreasonable to anticipate that black-footed albatrosses are capable of colonizing new areas if their current nesting habitat is lost.

In general, gradual shifts from the loss of old habitat to the availability of new habitat, as would occur under a scenario of gradual sea level rise, are considered most conducive to the establishment of new colonies (as opposed to the abrupt loss of all breeding sites) (Schippers *et al.* 2009, p. 469). The availability of nest sites is only rarely limiting for seabirds (Kildaw *et al.* 2005, p. 55), and we have no evidence to suggest that suitable nest sites are a limited resource for black-footed albatrosses in the Hawaiian Islands (COSEWIC 2007, p. 20). There are, however, some new challenges that black-footed albatrosses may face as a result of relocating their nest sites. For one, if the birds attempt to relocate to some of the higher-elevation Hawaiian islands in response to sea level rise, they will encounter predators that are currently not a threat to the species (*e.g.,* mongooses, cats, dogs, pigs, rats) (Naughton *et al.* 2007, p. 10). Whether such an option may be feasible for black-footed albatrosses in the future may rely on the implementation and success of current management efforts to restore habitat and eradicate nonnative predators on other nearby, higher elevation islands (Naughton *et al.* 2007, p. 19). There are no introduced predators on the islands of San Benedicto or the small islets off of Isla Guadalupe in the eastern Pacific (Naughton *et al.* 2007, p. 12). In addition, reduced habitat area will in turn mean increased competition with other nesting seabirds, such as the Laysan albatross, which often nests in the same habitat as the black-footed albatross. However, the evidence from historical photographs indicates that great numbers of seabirds can successfully nest at very high densities on these islands, suggesting that the same number of black-footed albatrosses may be able to continue nesting into the future on islands that have diminished in size, despite the presence of other potential competitors. The maximum density of nesting seabirds on these islands is unknown, and although available habitat does not presently appear to be restricted, it is unknown at what point in time it may potentially become a limiting factor.

There will undoubtedly be some short-term impacts to productivity of nesting black-footed albatrosses due to displacement from sea level rise; based on the elevation and topography of the islands, we anticipate such impacts would be concentrated in the Northwestern Hawaiian Islands and would not affect the Japanese Islands populations (see Table 4). In the Northwestern Hawaiian Islands, our assessment of the projected levels of terrestrial area lost over the next 10 to 20, 30 to 40, and up to 50 years suggests that the loss of terrestrial area on islands used for nesting by black-footed albatrosses will be relatively gradual. Moreover, the remaining land area for some of the larger colonies at Laysan Island, Pearl and Hermes Reef, and French Frigate Shoals will still be relatively substantial at the end of that time period (estimated as 97 percent terrestrial area remaining at Laysan with 34.8 percent of the Northwestern Hawaiian Islands breeding population, 67 percent terrestrial area remaining at Pearl and Hermes Reef with 9.6 percent of the breeding population, and 69 percent terrestrial area remaining at French Frigate Shoals with 6.7 percent of the breeding population).

We note that information was not available for the largest breeding colony of black-footed albatrosses at Midway Atoll. Lost land area may disproportionately affect black-footed albatross nesting habitat, since many individuals select nesting sites on beaches near the shoreline, which will in many cases represent the first land area lost. In addition, diminished land area will not be the only effect of sea level rise, as the remaining land will consequently become increasingly vulnerable to overwash events. However, based on the relatively gradual nature of sea level rise over time, the amount of land area projected to remain, the ability of black-footed albatrosses to nest in habitats other than sandy beaches, the apparent capacity of these islands to support high densities of nesting seabirds, and the evidence suggesting that black-footed albatrosses will breed on other than their natal islands and colonize new sites, albeit in low numbers, we believe it is reasonable to conclude that the black-footed albatross may shift to new nest sites over time in response to sea level rise in the Northwestern Hawaiian Islands.

In summary, many uncertainties remain with regard to the potential impacts of future sea level rise on the

black-footed albatross. As mentioned previously, at present we have no regional models of sea level rise specific to the islands used for nesting by black-footed albatross, but must instead rely primarily on global projections of sea level rise. Yet we know that sea level rise is likely to vary considerably in different locations across the globe, as described above. As also noted above, although we have some rough projections of how much terrestrial area may be lost on a limited number of the islands used for breeding, at present we do not have the data to inform us as to how much of the land area that may be lost currently serves as nesting habitat. In addition, projected losses of land area above sea level using a simple passive inundation or ''bathtub'' model do not account for other potential consequences of climate change that may impact the suitability of remaining terrestrial areas for nesting, such as storm surge.

The greatest uncertainty in evaluating the threat of sea level rise and potential loss of nesting habitat is the behavioral response of the birds over time. The biggest question in this regard is whether established adult breeders would eventually shift their nesting locations in response to habitat loss as a consequence of inundation; there is some evidence that supports such a potential shift, and some evidence that suggests such a shift would more likely require waiting for birds hatched on the islands to attain reproductive age and establish new nest sites elsewhere. Whether suitable, predator-free habitat would be available for these birds in the future is another uncertainty. In any case, we anticipate some unknown level of reduced productivity and likely diminished population sizes will be realized as a consequence of smaller habitat area. However, based on the land area projected to remain and the relatively large breeding population of black-footed albatrosses (Table 4), we do not anticipate that these interim losses will be so great as to pose a significant threat to the black-footed albatross.

We conclude, based on this assessment, that there will likely be some short-term impacts to black-footed albatross nesting success due to sea level rise and coastal inundation, and that future population sizes in the Hawaiian Islands may be smaller due to a reduced area of available nesting habitat. However, we do not have evidence to suggest the projected changes will be so great as to pose a significant threat to the breeding populations of the species rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Climate Change and Wave Inundation

The central Pacific location of the Northwestern Hawaiian Islands exposes the atoll islands to wind and ocean swells from all directions but mostly from the northeast and northwest (Vitousek and Fletcher 2008, p. 541). The northeastern trade winds predominate during three quarters of the year, and generate average wave heights of 6.6 ft (2 m) (Fletcher and Feirstein 2009, pp. 3–4). During winter, when black-footed albatrosses are nesting on the Northwestern Hawaiian Islands, northwestern Pacific storms generate much larger waves with an average height of 25.3 ft (7.7 m) (Fletcher and Feirstein 2009, p. 3). Wave inundation of coastal atoll island areas or overwash of entire atoll islands is known to occur, but information specific to this issue in the Northwestern Hawaiian Islands is limited. Two major features will affect future wave inundation: sea level rise and storm frequency and intensity. These are discussed below, based on the best scientific information available.

Winter (November through April) mid-latitude (30 to 60° N latitude) storms (extra-tropical cyclones) can produce waves that may impact black-footed albatross breeding. The southern cold fronts of these winter storms bring rain to the Northwestern Hawaiian Islands (Juvic *et al.* 1998, p. 54). The low-pressure centers of these mid-latitude storms generate ocean waves that can propagate to the Hawaiian Islands. Approximately 20 strong mid-latitude storms occur each year in the north Pacific (Graham and Diaz 2001, p. 1,874). Large waves generated by these storms are known to periodically overwash small islets (*e.g.,* Sand and Bird islets at Pearl and Hermes Reef; Gin and Little Gin islets at French Frigate Shoals) and inundate coastal sites in the Northwestern Hawaiian Islands and destroy near-shore black-footed albatross nests (Arata *et al.* 2009, p. 11). Most recently, a large wave event destroyed approximately 40 percent of black-footed albatross nests on Laysan Island in February 2011, resulting in the loss of an estimated 9,000 chicks, and more than 20,000 black-footed albatross chicks are estimated to have been lost when the Northwestern Hawaiian Islands were overwashed by a tsunami following the March 11, 2011, earthquake off Sendai, Japan (Flint 2011b, pers. comm.). The reported mortality of chicks from the tsunami is likely an underestimate, as counts were not available for all islands affected. There are no estimates as to the number of adults that may have been lost, but in general it is expected that chicks make up the vast majority of mortalities in such events.

Current climate models indicate that mid- and high- (60° to 90° N latitude; too far north to generate Pacific waves) latitude Pacific storms will shift to the north with a decrease in storm frequency in the mid-latitudes, an increase in frequency in the north latitudes (USCCSP 2008, p. 64), and an increase in the intensity of mid- and high-latitude storms (USCCSP 2008, p. 115). These model results are supported by observations from 1959 through 1997 that show similar trends (USCCSP 2008, pp. 64, 115). Winter (November through March) wave heights generated from climate models show significant increases in the northwestern and northeastern Pacific, but in the vicinity of the major black-footed albatross breeding areas (Northwestern Hawaiian Islands, Torishima Island, and the Ogasawara Islands), winter wave heights are predicted to remain relatively unchanged for the period 1990–2080 (Wang and Swail 2006, p. 116). Reduced future storm frequency in the mid-latitudes combined with no significant change in wave heights suggests that black-footed albatross may likely not be negatively affected to a degree beyond historical and current impacts, if these predictions generally hold. As in the past, wave surge and occasional overwash events will occasionally impact black-footed albatrosses breeding at localized areas. Although such events may have a large short-term impact on productivity in a single year, as with the significant wave events and tsunami observed in early 2011, most adult breeders generally survive these events, and the long-term impact on the species is limited. Therefore, based on the best available data, we have no information to indicate that the impact of wave or storm events will be so great as to pose a significant threat to the breeding populations of the species rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Climate Change and Tropical Cyclone Storm Frequency and Intensity

The Pacific tropical cyclone (*e.g.,* typhoon and hurricane) storm season conservatively starts in May or June, with the core storm season running from July through November in the eastern and central Pacific, and through December in the western Pacific. Black-footed albatrosses arrive at their nesting sites in mid- to late October and do not begin to lay eggs until mid-November. Thus, the overlap between adult birds arriving at nesting sites and the end of the tropical cyclone storm season is likely only a few weeks. There are no

climate model predictions for a change in the duration of Pacific tropical cyclone storm season.

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. 1068–1069, 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 these tropical cyclones is projected to decrease in the central and eastern Pacific (*e.g.,* the main and Northwest Hawaiian Islands and the islands off Mexico where black-footed albatrosses have recently attempted to breed) 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). In the western Pacific (*e.g.,* the Mariana Islands and the Japanese Islands that currently, or in the past, supported black-footed albatross populations), the frequency and intensity of typhoons are projected to increase by a few percent 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). Although there is some indication that the impacts of tropical cyclones are expected to increase in general as a result of projected sea level rise (Knutson *et al.* 2010, p. 157), we do not have any modeling available specific to the regions used by nesting black-footed albatross, and we do not have sufficient data to quantify or evaluate the potential impacts of such events on the species or to assess the possible population-level response over the extended timeframes of the projections, except to note that the timing of such events does not usually coincide with the nesting season of the black-footed albatross, when potential impacts from such events would be expected.

In summary, based on the limited information available to us and the climate model analyses described above, the anticipated increases in cyclone intensity or frequency are minimal. This is especially true toward the end of the storm season when albatross begin to arrive at the breeding grounds and cyclone intensity and frequency is normally decreasing. Furthermore, we believe it is highly unlikely that multiple nesting sites would be impacted in a single storm season, given the wide geographic spread of the nesting sites used by black-footed albatrosses. We further note that the frequency of hurricanes in the Northwestern Hawaiian Islands, where the majority of black-footed albatrosses nest, is currently low and is predicted to decrease with climate change.

We conclude, based on this assessment, that while there may be some short-term impacts to black-footed albatross nesting success due to the potential overlap between the arrival of birds at nesting sites and the end of the tropical storm season, we do not have evidence to suggest that projected changes in storm frequency or intensity will be so great as to pose a significant threat to the breeding populations of the species rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Climate Change and Marine Productivity

The link between marine productivity and climate is not well understood (McGowan *et al.* 1998, p. 210; Polovina 2005, p. 233). The potential impacts of climate change on the food supply of the black-footed albatross (mainly flying fish eggs and squid (Arata *et al.* 2009, p. 11)), and thus survival and reproduction, has not been well studied. There are, however, two major natural climate oscillations associated with major changes in marine ecosystems in the Pacific: El Niño-Southern Oscillation (ENSO; (McPhaden *et al.* 2006, p. 1,741) and the Pacific Decadal Oscillation (PDO) (Miller *et al.* 2004, p. 163).

The ENSO can influence productivity in the tropical Pacific (Fiedler 2002, p. 270; McPhaden *et al.* 2006, p. 1,741) and the west coast of Central and North America (McGowan *et al.* 1998, p. 214). El Niño-Southern Oscillation is a 2- to 7-year fluctuation of unusually warm (El Niño) and cool (La Niña) conditions in the tropical Pacific associated with an unstable interaction between sea surface temperature and atmospheric pressure. It results in variations in wind, rainfall, ocean thermocline depth, circulation, and ultimately oceanic biological productivity (McGowan *et al.* 1998, p. 214; Fiedler 2002, p. 267). At present, the relationship between the future frequency and intensity of ENSO events related to global climate change is not yet determined and may be unchanged, increasing or decreasing (Guilyardi *et al.* 2010, p. 325; Vecchi and Wittenberg 2010, p. 260). ENSO affects areas used by the black-footed albatross mainly along the west coast of the United States and Canada (McGowan *et al.* 1998, p. 214; McPhaden *et al.* 2006, p. 1,741; Arata *et al.* 2009, p. 6). In this area, ENSO can affect plankton biomass, the distribution of fishes and invertebrates, and the breeding success of seabirds, sea lions, and seals (McGowan *et al.* 1998, p. 214).

A qualitative analysis of black-footed albatross reproductive success (1980 through 2008 on Tern Island, French Frigate Shoals) and number of breeding birds (Laysan Island, Midway Atoll, and French Frigate Shoals) showed no relationship with El Niño or La Niña events (USFWS 2009a, unpubl.). Although there have been references to ''dramatic breeding failures'' of black-footed albatrosses in years following El Niño events, inspection of the underlying data suggest this may be nothing more than natural variability, since the same data also show normal productivity following other El Niño years, and no statistical analyses were completed to support the claim (Kappes *et al.* 2010, p. 257, and references therein). Based on this information, we conclude that changes in ENSO due to climate change are unlikely to affect black-footed albatross in the foreseeable future.

The PDO is a recurring pattern of interdecadal climate variability that is widespread and detectable as regime shifts in Pacific Ocean ecosystem structure (Mantua *et al.* 1997, p. 1,070). Climate, sea surface temperatures, and ecosystems affected by the PDO cover the tropical and central north Pacific, the Bering Sea, the Gulf of Alaska, the California Current, and the Kuroshio-Oyashio Extension (Miller *et al.* 2004, p. 163). These are areas used by the black-footed albatross for foraging. The components of the marine ecosystem that are affected include significant changes in primary productivity and in abundance of salmon, sardines, anchovy, rockfish, yellowfin tuna, seabirds, zooplankton, and nutrients (Chavez *et al.* 2003, p. 220). While the PDO is a well-documented climatic and ecological cycle, the underlying causes of PDO are not well understood (Miller *et al.* 2004, p. 163) and reliable climate modeling of future PDO responses are currently lacking (Wang *et al.* 2010, p. 258). An examination of data on black-footed albatross reproductive success or the number of breeding birds showed no sustained changes before and after the 1999 PDO shift from a warm phase to a cool phase PDO (USFWS 2009a, unpubl.). Based on this information, we conclude that regime shifts driven by the PDO-associated climate change are unlikely to pose a significant threat to the black-footed albatross.

A recent study by Kappes *et al.* (2010, p. 254 and Table 4) indicated that the time spent in area-restricted searching (*i.e.,* foraging behavior) of black-footed albatrosses decreases with increasing sea surface temperature and increases

with increasing primary productivity. Black-footed albatrosses foraged most intensively in areas with sea surface temperatures of 61.3 ± 6.8 °F (16.3 ± 3.82 °C) (Kappes *et al.* 2010, pp. 253, 255). Although black-footed albatrosses demonstrated flexibility in foraging strategies and shifted search efforts in response to environmental cues, the researchers noted that the distribution of sea surface temperatures in the North Pacific will likely be altered in response to climate change, and reliable associations between water temperature and prey availability may no longer persist under such conditions (Kappes *et al.* 2010, p. 256).

Polovina *et al.* 2011 (p. 1) modeled the effects of climate change on temperate, subtropical, and tropical North Pacific upwelling biomes. Their results project that by 2100 the subtropical biome will expand to the north and south, increasing its area by about 30 percent, with a slight decrease in primary productivity per unit area and a northward shift in warmer sea surface temperatures (Polovina *et al.* 2008, p. 3, Table 1; Polovina *et al.* 2011 (Figures 2, 6, and 7, respectively). The temperate biome to the north of the subtropical biome is predicted to decrease in area and also show a slight decrease in primary productivity per unit area and warmer sea surface temperatures. The core foraging area for breeding black-footed albatrosses spans the transition zone between these two biomes (Arata *et al.* 2009, p. 6; Kappes *et al.* 2010, p. 253; Polovina *et al.* 2011, Figures 2 and 7).

As discussed above, sea surface temperature and primary productivity are closely associated with the foraging and searching behavior of black-footed albatrosses, and these climate change effects may eventually impact the breeding success of these birds. Reduction in phytoplankton may eventually affect trophic structure, and the impact is expected to move up the food web (bottom-up control) through copepods that feed on phytoplankton to zooplankton carnivores and on to larger top predators such as squid and fish that comprise the diet of seabirds (Richardson and Schoeman 2004, p. 1609). These changes in productivity may also alter the spatial distribution of primary and secondary pelagic production. However, negative impacts to the black-footed albatross due to changes in ocean productivity have not been observed to date, and based on the best information currently available, any predicted impacts of shifts in sea surface temperature, primary productivity, or other factors such as food type or food distribution, on black-footed albatross survival remain speculative. We have no information at this time to suggest that possible predicted decreases in marine productivity or shifts in marine biomes pose a significant threat to the black-footed albatross throughout its range, in the Hawaiian Islands, or in the Japanese Islands.

Climate Change and Ambient Temperature

Ambient temperature is one of many variables that affects the ability of a seabird to thermoregulate (maintain its internal body temperature)—wind speed, solar radiation, and humidity, as well as metabolic heat production, thermal conductance, evaporative cooling, and behavior also affect the rate of heat transfer (Bakken *et al.* 1985, p. 934; Bakken 1992, entire). During the hatching and early nestling stages, air temperatures at black-footed albatross nest sites can reach daily maxima of 76 °F (24.5 °C) in January and February and 86.9 and 87.8 °F (30.5 and 31.0 °C) in June and July; soil temperatures may be as high as 104 °F (40 °C) (Howell and Bartholomew 1961, pp. 185–186). In general, avian embryos do not tolerate temperatures higher than 96.8 to 102.2 °F (36 to 39 °C), although several species can tolerate temperatures as high as 105.8 °F (41 °C) for several hours (Webb 1987, p. 893). The vigilant brooding behavior of black-footed albatross parents, however, protects their young from environmental extremes and maintains dry, shaded conditions for eggs and chicks kept at approximately 96.8 °F (36 °C) (Howell and Bartholomew 1961, p. 195).

The thermal tolerances of black-footed albatross adults, chicks, and eggs are not known. Incubation and brooding occurs in a dry environment often in open areas among bushes and trees (Howell and Bartholomew 1961, p. 192; Rice and Kenyon 1962a, pp. 558–562). Adult and large juvenile black-footed albatrosses respond to high ambient temperatures by panting, moving into shade, elevating their highly vascularized feet to increase convective cooling, shading their elevated feet by keeping their backs to the sun, and by lowering their heads (Howell and Bartholomew 1961, p. 189). Young chicks are brooded and sheltered by their parents until they are able to thermoregulate at about 18 to 20 days of age. Unbrooded, dry chicks can thermoregulate at air and substratum temperatures of 78.8 to 81.5 °F (26 to 27.5 °C) (Howell and Bartholomew 1961, p. 194, Figure 8). When nonbrooded chicks become hot, they often move away from the natal nest and build themselves a new, temporary nest in the shade of some nearby vegetation, returning to the natal nest when the adult returns to the nest with food (Rice and Kenyon 1962a, pp. 558–562).

Observations from other seabird species suggest that black-footed albatross are likely well adapted to tolerate the high temperatures that may be encountered during the breeding season. Other seabird species with dark plumage, such as the brown noddy (*Anous stolidus*) and sooty tern (*Sterna fuscata*), are known to nest under similar conditions in the Hawaiian Islands and have numerous adaptive mechanisms that enable them to deal with heat stress (Mathiu *et al.* 1991, entire; Ellis *et al.* 1995, entire; Mathiu *et al.* 1994, entire). Research suggests these seabirds have relatively low basal metabolic rates that may help offset heat gain from absorption of radiant heat by their dark plumage (Ellis *et al.* 1995, p. 311). These birds also exhibit a relatively wide thermoneutral zone (the range of ambient temperatures where energy spent on thermoregulation is minimized) between 77 and 95 °F (25 to 35 °C) for the sooty tern (Mathiu *et al.* 1991, p. 322, and references therein) and 72.1 to 98.8 °F (22.3 to 37.1 °C) for the brown noddy (Ellis *et al.* 1995, p. 309). Brown noddies can also allow body temperature to increase slightly in response to high ambient temperatures, which allows them to avoid evaporative water loss (Mathiu *et al.* 1991, p. 323; Ellis *et al.* 1995, p. 310). Sooty terns and brown noddies can use evaporative cooling at air temperatures up to 109 °F (43 °C) (Mathiu *et al.* 1991, p. 323; Mathiu *et al.* 1994, p. 286; Ellis *et al.* 1995, p. 312). Both species demonstrated greater effectiveness responding to high air temperatures as opposed to low air temperatures, and even hatchlings successfully thermoregulated under conditions of heat stress (Mathiu *et al.* 1991, p. 323; Mathiu *et al.* 1994, p. 292; Ellis *et al.* 1995, pp. 311–312). Chicks of the western gull (*Larus occidentalis*) can survive ambient air temperatures that are 14.4 to 25.2 °F (8 to 14 °C) higher than the daily maximum normally experienced (Salzman 1982, p. 743). Although we do not have studies specific to the black-footed albatross, we believe it is reasonable to assume this species has likely developed physiological adaptations to its environment similar to those exhibited by other seabirds nesting under similar environmental conditions.

The global average temperature has risen by approximately 0.319 °F (0.177 °C) per decade since 1981 (Trenberth *et al.* 2007, p. 253). According to modeling projections, global average temperature

is expected to continue to rise, even if carbon emissions remain at current levels (IPCC 2007, p. 13). In the main Hawaiian Islands at low elevation, the increase in surface temperature is about half of the global average, at approximately 0.157 °F (0.087 °C) per decade (1975–2005) (Giambelluca *et al.* 2008, p. 2). Under the various emissions scenarios considered by the IPCC, the range of increase in annual mean SAT change is projected to be 1.15 to 1.24 °F (0.64 to 0.69 °C) between 2011 and 2030 and 2.32 to 3.15 °F (1.29 to 1.75 °C) for the years 2046–2065 (Meehl *et al.* 2007, p. 763, Table 10.5). If the Hawaiian Islands continue to lag behind the global average in that same manner described above (Giambelluca *et al.* 2008, p. 2), then we expect average low-elevation temperatures will increase approximately half of the global average level, and thus for 2046–2065 would increase 1.16 to 1.57 °F (0.65 to 0.88 °C). Thus, June and July average air temperatures in the Northwestern Hawaiian Islands are likely to stay below 90 °F (33.3 °C) over the next several decades. While modeling has provided us with a range of increases in average regional and global temperatures, we note that we do not have such projections for the magnitude of likely future temperature extremes.

In summary, although we cannot predict future operative environmental temperatures that will be experienced by the black-footed albatross, our evaluation of the best scientific and commercial data available at this time indicates this species exhibits a variety of adaptations to nesting in a hot environment with intense solar radiation, and is likely capable of adapting to the projected average increases in air temperature expected over the next several decades. Therefore, based on our evaluation, we conclude the projected increase in average ambient temperature does not pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Summary of Factor A

Although historically military activities impacted nesting populations of black-footed albatrosses as well as their nesting habitat in the central and western Pacific prior to, during, and after World War II, black-footed albatross nesting habitat rangewide is currently protected on islands that are managed for the conservation of native wildlife and their habitat, and a future military presence with negative impacts to habitat is unlikely. Loss of breeding habitat from active volcanism is a potential threat on Torishima Island in Japan, though less than 5 percent of the rangewide breeding population nests on this island. In addition, we have evidence that black-footed albatrosses have survived past eruptions or successfully recolonized following volcanic events on Torishima (see ''Volcanic Activity,'' above). Volcanic activity is not known on any of the nesting islands for black-footed albatross in the Hawaiian Islands. We do not consider the potential exploration of undersea natural gas resources to be a threat to black-footed nesting habitat on the Senkaku Islands, where less than 0.1 percent of the rangewide breeding population nests, since the sovereignty of those islands is in dispute, the existence of such reserves is questionable, and it appears unlikely that any such exploration will occur. Even should such development occur, we have no evidence to suggest that it would result in substantial enough impacts to nesting habitat to pose a threat to the black-footed albatross. Natural gas development is not anticipated on any of the nesting islands for black-footed albatross in the Hawaiian Islands. For the reasons described above, we conclude military activities, volcanic activity, and natural gas development do not pose a threat to the black-footed albatross in relation to the present or threatened destruction, modification, or curtailment of habitat or range of the species in the Hawaiian Islands, the Japanese Islands, or rangewide.

Verbesina encelioides is an invasive, nonnative plant that is established on Kure Atoll, Midway Atoll, and Pearl and Hermes Reef that poses a threat to the black-footed albatross. The Service and HDLNR are implementing control measures to reduce the distribution of *V. encelioides* on Midway and Kure atolls. *Casuarina equisetifolia* is a nonnative tree that has been identified as a threat to ground-nesting seabirds on Midway Atoll. *Casuarina equisetifolia* is also subject to a control program. The black-footed albatross populations on Midway Atoll and Kure Atoll are increasing, in spite of the presence of *V. encelioides* on both of these islands and the presence of *C. equisetifolia* on Midway Atoll. Therefore, we conclude that current control measures are sufficient to offset this threat, and we expect such measures to continue. We have no information to indicate the likely effects of climate change on these nonnative plants. In addition, we have no information to indicate nonnative plants pose a threat to black-footed albatrosses in the Japanese Islands. Therefore, we conclude that, as currently managed, *V. encelioides* and *C. equisetifolia,* or other nonnative plants, are not a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Our analysis indicates that projected sea level rise over the next 10 to 20 years (0.5–1.0 ft (0.1–0.3 m)), 30 to 40 years 1.4–1.9 ft (0.4–0.6m), and 50 years (2.4 ft (0.7 m)), may result in beach erosion in some (seaward) areas and beach deposition in other (lagoon-side) areas on Tern, Sand, and Eastern islands, and Kure Atoll (which together support approximately 48 percent of black-footed albatross breeding pairs), as has been observed in other Pacific atoll islands in response to rising sea level. Sea level rise is likely to affect only a very limited area of the geomorphologically similar islands of Lisianski and Laysan (which together support approximately 35 percent of black-footed albatross breeding pairs). Approximately 12 percent of black-footed albatrosses nest on high islands, which we defined as islands with maximum elevation greater than 165 ft (50 m) (*e.g.,* Kaula, Lehua, Necker, and Nihoa in the Hawaiian Islands and the Japanese islands of Torishima, Senkaku, and Ogasawara). Breeding birds on these islands will not be affected by projected sea level rise. Although sea level rise is expected to result in the loss of land area in the Hawaiian Islands, and we acknowledge that this loss of land may disproportionately affect black-footed albatross nesting habitat, the best available information indicates that sufficient land area will likely remain to support large numbers of black-footed albatross, albeit at reduced numbers.

Based on the anticipated relatively gradual nature of sea level rise over time, the amount of land area projected to remain, the ability of black-footed albatrosses to nest in habitats other than sandy beaches, the apparent capacity of these islands to support high densities of nesting seabirds, and the evidence suggesting that black-footed albatrosses may have the behavioral flexibility to seek out new nesting sites, we believe the black-footed albatross may shift to new nest sites over time in response to sea level rise in the Hawaiian Islands. Based on this assessment, we do not believe sea level rise and coastal inundation pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Current climate models indicate that winter wave heights in the black-footed albatross breeding areas in the Northwestern Hawaiian Islands and the

Japanese Islands will remain unchanged. Wave surge and overwash events are expected occurrences and will continue to happen occasionally and impact breeding black-footed albatrosses in localized areas. We have no evidence that such events will have greater impacts on the population than are observed under current conditions. Based on this assessment, we do not believe winter wave inundation poses a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

While tropical storm intensity is projected to increase slightly (*i.e.,* by a few percent) in the central Pacific (*e.g.,* Hawaiian Islands) in response to climate change, the frequency of tropical storms is projected to decrease. Over the next 100 to 200 years, slight increases (*i.e.,* a few percent) in both the frequency and intensity of tropical storms are projected in the western Pacific (*e.g.,* Japanese Islands). These projected increases are not expected to significantly affect black-footed albatrosses, which arrive at their nesting sites in mid- to late October and begin laying eggs in early to mid-December. Tropical storm season in the central and western Pacific ends in November or December; therefore, the period of overlap between birds arriving at nesting sites and the end of the tropical storm season is likely only a few weeks, which reduces the probability of tropical storms impacting nesting black-footed albatrosses. While there may be some short-term impacts to black-footed albatross nesting success due to the potential overlap of bird arrivals at nesting sites at the end of the tropical storm season, we do not anticipate these impacts to significantly affect the breeding population of the species. Therefore, based on our assessment of the best available information, we do not believe projected changes in storm frequency and intensity pose significant threats to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands. We are unable to assess the effects of climate-induced changes in the duration of tropical storm seasons on the black-footed albatross due to the lack of studies and available information.

Negative impacts to black-footed albatrosses due to changes in marine productivity as a result of climate change have not been observed. Interannual changes in marine productivity from ENSO fluctuations have not impacted breeding success for the black-footed albatross on Tern Island over 28 years of observations, nor have changes in marine productivity had an effect on the number of pairs attempting to nest on Laysan Island, Midway Atoll, or French Frigate Shoals. The PDO is a well-documented climatic and ecological cycle though its underlying causes are not well understood, and climate models of future PDO responses are not available. The large foraging range of the black-footed albatross may buffer it from the impacts of variable or reduced marine productivity. Based on our assessment of the best available information with regard to ENSO, PDO, and reduced marine productivity, we do not believe that possible predicted decreases in marine productivity pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Periodic fluctuations in ambient temperature have been withstood and have shown no significant influence on the rangewide population of the black-footed albatross, which is currently stable or increasing. Increases in ambient temperature on the Hawaiian Islands have been about half of the global average (Giambelluca *et al.* 2008, p. 2), therefore the anticipated range of increase by the year 2065 is about 1.16 to 1.57 °F (0.65 to 0.88°C), based on IPCC global projections of increase in annual mean SAT of 2.32–3.15°F (1.29–1.75 °C) between 2046 and 2065 (Meehl *et al.* 2007, p. 763, Table 10.5). Black-footed albatrosses are adapted to nesting in a hot environment with high solar radiation, and brooding adults normally provide a stable thermal environment for eggs and chicks. Studies of other seabirds have indicated significant levels of chick mortality when air temperatures increased by a measure of 14.4 to 25.2 °F (8 to 14 °C) above the normal daily maximum temperatures, suggesting that the predicted average increase of 1.16 to 1.57 °F (0.65 to 0.88°C) is unlikely to affect black-footed albatross chicks. However, because we have no information to suggest the magnitude of future temperature extremes, we cannot make any informed assessment as to how such extreme temperatures may potentially impact the species. In assessing the best available information, we find no compelling evidence that the black-footed albatross will experience population-level effects from projected increases in global ambient temperature rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Therefore, based on our assessment of the best scientific and commercial data available, concerning present threats to black-footed albatross habitat and their likely continuation in the future, we conclude the black-footed albatross is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The exploitation of the black-footed albatross for feathers and eggs at the turn of the twentieth century reduced its population to its lowest known size and distribution (Lewison and Crowder 2003, p. 744; Arata *et al.* 2009, p. 35). In 1923, the breeding population was estimated to be 18,000 pairs (Arata *et al.* 2009, p. 2). Little information exists to estimate the former size of the extirpated colonies. The threat from poaching no longer exists because nesting islands are now managed for the conservation and protection of native wildlife and their habitat, and there is no longer a demand for black-footed albatross feathers and eggs.

We are not aware of any information indicating that overutilization of black-footed albatrosses for commercial, scientific, or educational purposes threatens this species anywhere within its range, or is likely to do so within the foreseeable future. Therefore, based on a review of the best scientific and commercial information available, we conclude that overutilization for commercial, recreational, scientific, or for educational purposes is not a significant threat to the black-footed albatross across its range, in the Hawaiian Islands, or in the Japanese Islands.

Factor C. Disease or Predation

Because the range of the black-footed albatross overlaps with that of the endangered short-tailed albatross (*Phoebastria albatrus*) (final listing rule 65 FR 46643; July 31, 2000), it has been suggested that disease and predation factors affecting the short-tailed albatross are likely the same for black-footed albatrosses. Here we consider whether diseases such as avian pox, avian cholera, or West Nile virus are a potential risk to black-footed albatrosses, and whether predation poses a significant risk to the species.

Disease

Avian pox is a disease that has been reported in Laysan albatrosses on Midway Atoll and on the main Hawaiian Islands (Sileo *et al.* 1990b, p. 335; Young and VanderWerf 2008, pp. 93–97; Arata *et al.* 2009, pp. 20–21). The principal form of transmission in wild birds is through the introduced mosquito, *Culex quinquefasciatus,* rather than through direct contact with

a contaminated surface or aerosol (Warner 1968, p. 104; Arata *et al.* 2009, p. 20). In the breeding range of the black-footed albatross in the Hawaiian Islands, the mosquito has been documented only on Midway Atoll and Lehua Island. Epizootics (an epidemic disease outbreak in animals) of pox in Laysan albatrosses have occurred on Midway Atoll in the past, but we do not have information documenting the occurrence of pox in black-footed albatrosses on Midway Atoll (Arata *et al.* 2009, p. 20). It has been suggested that pox rarely affects chicks of the black-footed albatross because they nest in more open areas, where mosquitoes are not as abundant (Arata *et al.* 2009, p. 20). A 4-year study of the effect of avian pox on the fledging success of Laysan albatrosses on Oahu (Young and VanderWerf 2008, entire) found infection rate was significantly correlated with rainfall; however, differences were not detected in fledging rate in years with high pox infections (wet years) and years with low pox infections (dry years), nor with the overall fledging rate on Midway Atoll.

Although it was once thought that high chick mortality would result from infection with avian pox in Laysan albatrosses, even chicks with severe infections survived, and some resightings of formerly infected chicks as healthy adults confirmed survivorship (Young and VanderWerf 2008, p. 96). The high recovery rate, fledging success, and post-fledging survival of albatross chicks with avian pox infections suggests strong immunity to the disease (Young and VanderWerf 2008, p. 93). However, it is not known whether infection may impact long-term survivorship or reproduction (Young and VanderWerf 2008, p. 96). On Lehua Island, 2 of 16 black-footed albatross chicks were observed with pox lesions in 2005, but appeared to be in good condition otherwise, and were presumed to have developed and fledged normally (VanderWerf 2011, pers. comm.). In summary, the prevalence of avian pox in black-footed albatrosses in the Hawaiian Islands is low, and based on limited information, it appears that infected individuals recover from the disease (Young and VanderWerf 2008, p. 93. Therefore, we conclude that avian pox does not pose a significant threat to the black-footed albatross in the Hawaiian Islands.

We are unable to determine the extent and impact of avian pox on the black-footed albatross in the Japanese Islands due to the lack of study and available information. We have no information to suggest that avian pox is present on any of the Japanese Islands used for nesting by black-footed albatrosses. Based on the limited information available regarding this disease, it is reasonable to assume that the prevalence of this disease in black-footed albatrosses in the Japanese Islands, if present, is low (since it has never been reported from the birds on these islands) and as we have no information to suggest that the situation in the Japanese Islands is different from that in the Hawaiian Islands. We assume that if any birds were infected, individuals would recover from the disease, as has been observed in the Hawaiian Islands. Therefore, the effect of avian pox on black-footed albatrosses in the Japanese Islands is expected to be minimal, and we have no evidence to suggest that avian pox poses a significant threat to the black-footed albatross in the Japanese Islands.

Diseases such as West Nile virus, avian cholera, and avian influenza have not been documented in north Pacific albatrosses. West Nile virus is a mosquito-borne disease that has had dramatic effects on birds in North America, though it has not been detected in the Hawaiian Islands. It has been found in more than 60 species of dead wild birds, and an additional 20 species of dead birds in zoos (Steele *et al.* 2000, pp. 208–224; Vetmed 2009). A thorough search of the literature indicated that the virulence of West Nile virus to black-footed albatrosses, or albatrosses of any species, has not been tested. As stated above, within the breeding range of black-footed albatrosses, mosquitoes currently occur on Midway Atoll and Lehua Island. For transmission to occur, either an infected bird has to reach a breeding island with mosquito populations, or a mosquito carrying the virus has to reach a breeding island. There is some question as to whether a bird with an active virus could survive the attempt to fly to the Hawaiian Islands (Burgett 2009, pers. comm.). A mosquito already infected with West Nile virus could arrive on Midway Atoll as a stowaway on an airplane (only Midway Atoll and Tern Island have active runways), but most flights to these locations originate in Honolulu (where screening protocols are in place, see below), although Midway's runway is available to all aircraft as an emergency landing strip (Flint 2009b, pers. comm.).

Between 2000 and 2009, the State of Hawaii's Departments of Agriculture and Health and the U.S. Department of Transportation implemented a West Nile virus monitoring program at major airports in the main Hawaiian Islands (State of Hawaii 2009). Currently this program is funded by the Service to monitor wild birds at Honolulu International Airport, Kalaeloa Regional Airport, and Dillingham Airfield, all on Oahu. Over the past 10 years of monitoring, West Nile virus has not been detected in the Hawaiian Islands. Therefore, the risk of transmission of West Nile virus to the Northwestern Hawaiian Islands is considered to be very low. West Nile virus has not been documented in north Pacific albatrosses nor has it been documented in wild or domestic birds in the Hawaiian Islands. Midway Atoll and Lehua Island do harbor mosquito populations, but the chance of these mosquitoes becoming infected with West Nile virus is unlikely. Therefore, we believe that West Nile virus does not pose a threat to the black-footed albatross in the Hawaiian Islands.

West Nile virus has not been documented in Japan (Shirafuji *et al.* 2011, entire), and we have no information to suggest that West Nile virus occurs within the breeding range of the black-footed albatross on any of the Japanese Islands. Due to the lack of study and available information we are unable to determine the potential extent and impact, if any, of West Nile virus on the black-footed albatross in the Japanese Islands, should the disease ever occur there. However, we presently have no evidence that it is likely to occur on the remote breeding islands of the species, or to suggest that it may pose a significant threat to the Japanese Islands population.

Avian cholera is a result of an infection by the bacterium *Patruella multocida,* and usually occurs in large-scale outbreaks, most commonly in migratory waterfowl at staging areas when populations are concentrated (Botzler 1991, pp. 367–395; USGS 1999, p. 75). Transmission can occur through inhalation of aerosol containing the bacteria or through the skin or mucous membranes by contact with contaminated surfaces (USGS 1999, p. 75). Avian cholera was first documented in the large yellow-nosed albatross (*Diomedea chlororhynchos*) as a probable cause of a significant decline in an albatross population. This species breeds on Amsterdam Island in the Indian Ocean and avian cholera is suspected to have spread to breeding colonies of the sooty albatross (*Phoebastria fusca*) and the very rare Amsterdam albatross (*D. amsterdamensis*) that also nest there (Weimerskirch 2004, pp. 374–379). The source of avian cholera on Amsterdam Island has not been confirmed but is suspected to have originated from domestic poultry or by increases in

temperature in the Indian Ocean, which increase the persistence of the bacteria in the environment (Weimerskirch 2004, p. 378). However, avian cholera has not been detected in birds in the Hawaiian Islands, and reports of die-offs of wild birds in countries other than the United States and Canada are uncommon (USGS 1999, pp. 80–82). Therefore, we conclude that avian cholera is not a threat to the black-footed albatross in the Hawaiian Islands.

We have little information with which to determine the potential extent and impact of avian cholera on black-footed albatrosses in the western Pacific islands due to the lack of study and available information; although avian cholera has been documented in Japan, mostly in domestic birds (Sawada *et al.* 1999, p. 21), we have no information indicating that avian cholera has been found on the Japanese islands used for nesting by the black-footed albatross. Furthermore, these islands are remote, and, should cholera ever spread to Torishima, the Ogasawara Islands, or the Senkaku Islands, the geographic distance between them makes it unlikely that all colonies would be affected simultaneously. Based on the limited information available, there is no evidence to suggest that avian cholera may pose a significant threat to the Japanese Islands population.

Wild birds have been affected by the H5N1 highly pathogenic avian influenza since 2002 (Uchida *et al.* 2008, p. 1). Avian influenza is primarily spread by direct contact between infected birds and healthy birds, and through indirect contact with contaminated equipment and materials. The virus is excreted through the feces of infected birds and through secretions from the nose, mouth, and eyes (USDA 2007). International surveillance for H5N1 avian influenza in wild birds was initiated in 2005. To date, H5N1 avian influenza has not been detected in wild birds in the mainland United States, the Hawaiian Islands, nor in Canada (Wildlife Disease 2009). As of September 2009, almost 4,000 samples had been collected from birds in the Hawaiian Islands, with no samples testing positive for the virus (Wildlife Disease 2009). For logistical reasons, surveillance in the Pacific region is implemented in locations where people are stationed. In remote areas such as the Northwestern Hawaiian Islands, sampling is passive and consists of testing dead birds; mortalities that are of concern or are questionable are sent to the USGS Honolulu Field Station for necropsy and testing for avian influenza (Fisher 2009, pers. comm.). In the course of 3 years, seven Laysan albatrosses from Midway Atoll have been sampled for avian influenza, but no black-footed albatrosses have been sampled, through either a live or mortality sample (Fisher 2009, pers. comm.). None of the seven Laysan albatrosses tested positive for the H5N1 virus (Fisher 2009, pers. comm.).

The Northwestern Hawaiian Islands are part of the Mid-Pacific flyway, which overlaps with the East Asian-Australasian flyway. Migratory shorebirds and waterfowl from sites in the Pacific with documented cases of H5N1 in wild and domestic birds, and also birds from the North American west coast and Alaska, are likely to use the Hawaiian Islands as a stopover or as wintering grounds. If an infected bird arrives in the Hawaiian Islands, it could come in contact with uninfected birds and transmit the virus to other wild birds, including the black-footed albatross. Additionally, because black-footed albatrosses range widely, they could come into contact with infected birds in waters adjacent to nations that have H5N1 infection in wild and domestic birds. However, the H5 subtypes of avian influenza do not survive well under saline conditions, which would reduce their survival in the saline conditions surrounding black-footed albatross nesting islands (Brown *et al.* 2007, p. 285). The H5N1 avian influenza has been detected in wild birds (primarily waterfowl) on the main islands of Japan (Uchida *et al.* 2008, p. 2); however, H5N1 avian influenza has not been detected in wild birds on the Japanese Islands (Torishima Island, Ogasawara Islands, Senkaku Islands). The possibility of infection of black-footed albatrosses with the H5N1 virus appears to be low, and we have no evidence to suggest that it poses a significant threat to the species anywhere within its range. Therefore, we conclude that H5N1 avian influenza is not a significant threat to the black-footed albatross across its range, in the Hawaiian Islands, or in the Japanese Islands. Furthermore, at this time the limited information available does not suggest that the effects of climate change are likely to increase the threat of avian disease to the black-footed albatross.

In summary, based on our assessment of the best scientific and commercial data available, we conclude that the black-footed albatross is not threatened by disease across its range, in the Hawaiian Islands, or in the Japanese Islands.

Predation

All of the islands in the Northwestern Hawaiian Islands are free of rats (*Rattus* spp.), which are known to prey on eggs and chicks of the black-footed albatross. To prevent the introduction of rats to the Northwestern Hawaiian Islands, which are part of the PMNM, every vessel that enters the PMNM is required by access permit to be inspected for rats (White 2009, pers. comm.). In 2009, rat eradication efforts were initiated on Lehua Island, where less than 0.011 percent of the rangewide breeding population of black-footed albatrosses occurs. Although these efforts were not entirely successful, the eradication strategy is continuing to undergo review and improvement (Parkes and Fisher 2011, entire). Lehua Island is the only island currently used by nesting black-footed albatrosses in the Hawaiian Islands that has rats, and because such a small proportion of the population nests there, we conclude that predation by rats does not pose a significant threat to black-footed albatrosses in the Hawaiian Islands.

In the Japanese Islands, rats are documented from Torishima Island and the Ogasawara Islands (Okochi *et al.* 2004, p. 1,466) and could occur on the Senkaku Islands, though recent survey information is not available. The Ogasawara Islands and Torishima Island together are home to approximately 5 percent of the rangewide breeding population and 98 percent of the Japanese Islands population, which has been documented to be increasing despite the presence of rats (Cousins and Cooper 2000, p. 23; ACAP 2010, p. 4; Hasegawa 2010 pers. comm.). Even though there has been no documented effect of rat predation on the population, it is likely that rat predation is limiting the growth potential of the population, and an effort should be made to eradicate the rats from Torishima. Nonetheless, the continued positive growth of the populations in Japan (see Figure 4) indicates that predation by rats is likely not a limiting factor for these populations; therefore, we conclude that predation by rats does not pose a significant threat to black-footed albatrosses in the Japanese Islands.

Predation by sharks has been suggested as a possible threat to the black-footed albatross. Sharks are present offshore of all breeding islands and prey upon fledglings on their first flight out to sea; this likely occurs throughout the range of the black-footed albatross, but is best documented in the Northwestern Hawaiian Islands (Naughton *et al.* 2007, p. 10). On Tern Island, it is estimated that approximately 10 percent of black-footed albatross fledglings are depredated by sharks (Wake Forest University 1999, p. 1). Predation of fledging black-footed albatrosses by

sharks is a natural source of mortality, and modeling efforts by numerous authors (Cousins and Cooper 2000, entire; Lewison and Crowder 2003, entire; Wiese and Smith 2003, entire; Niel and LeBreton 2005, entire; Veran *et al.* 2007, entire; and Arata *et al.* 2009, entire) have incorporated estimates of juvenile survivorship into their population projections that account for sources of mortality, such as shark predation, that may be present but cannot be quantified. Since measures of juvenile survivorship reflect all sources of mortality, including shark predation, and these models report mostly stable and increasing populations of black-footed albatrosses in both the Hawaiian Islands and the Japanese Islands (Wiese and Smith 2003, p. 35; Arata *et al.* 2009, p. 51; ACAP 2010, p. 5; Figure 4, this document), we cannot conclude that shark predation is having a population-level effect on the black-footed albatross. We, therefore, have no evidence to suggest that shark predation may pose a significant threat to the black-footed albatross population rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Summary of Factor C

The prevalence of avian pox is low for black-footed albatrosses in the Hawaiian Islands. Although mortality from avian pox was once thought to be relatively high, more recent information indicates that infected individuals recover and most likely survive. Because of a lack of study and available information, we are unable to determine the extent, if any, and impact of avian pox on black-footed albatrosses in the western Pacific islands, but we have no evidence to suggest that it may pose a significant threat to the Japanese Islands population. Based on this information, we conclude that avian pox does not pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Other avian diseases, such as H5N1 avian influenza, West Nile virus, and avian cholera, have not been documented in the Hawaiian Islands or in the black-footed albatross breeding islands in the western Pacific. The H5N1 avian influenza has been reported only on the main islands of Japan and has been associated primarily with domestic birds and migratory waterfowl (Uchida *et al.* 2008, pp. 1–8). It has not been reported from albatrosses on these islands or from black-footed albatrosses on Torishima Island, the Ogasawara Islands, or the Senkaku Islands, but this may be because of a lack of study. No other data are available with which to assess the susceptibility of black-footed albatrosses to these diseases (H5N1 avian influenza, West Nile virus, and avian cholera). If any of these diseases becomes established in the breeding islands of the black-footed albatross in the future, this species may be impacted, but the remoteness of its Pacific islands breeding habitat decreases the likelihood of transmission of these diseases to these areas. Therefore, we conclude that H5N1 avian influenza, West Nile virus, and avian cholera do not pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Predation by nonnative rats is not a threat to black-footed albatrosses in the Northwestern Hawaiian Islands, where 95 percent of the species breeds, because: (1) There are no rats on these islands; and (2) protocols are in place to prevent the inadvertent introduction of rats to these islands or to eradicate them if they are accidentally introduced (White 2009, pers. comm.). Rat eradication efforts are ongoing on Lehua Island in the main Hawaiian Islands, where less than 0.01 percent of the rangewide black-footed albatross population breeds. Rats are reported on Torishima Island and the Ogasawara Islands, where almost 5 percent of the black-footed albatross population breeds rangewide; however, the breeding colonies on these islands appear to be increasing, despite the presence of rats (Hasegawa 2010, pers. comm.). It is unknown if rats are present on the Senkaku Islands, where less than 0.1 percent of the black-footed albatross breeding population nests. Based on the lack of evidence that rats are having any limiting effect on black-footed albatross populations, we do not consider rat predation to be a significant threat to the black-footed albatross in the Japanese Islands. Therefore, we conclude that predation by rats does not pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Shark predation is a natural source of mortality for the black-footed albatross. However, population models that have taken this natural source of mortality into account report stable and increasing populations of black-footed albatross (Arata *et al.* 2009, p. 51). Therefore, we conclude that predation by sharks does not pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Based on our assessment of the best scientific and commercial data available, we conclude that the black-footed albatross is not threatened by either disease or predation rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

To determine whether existing regulatory mechanisms protect the black-footed albatross, we reviewed existing international and U.S. conventions, agreements, and laws for the specific protection of black-footed albatrosses or their marine and terrestrial habitats in the countries where they forage, migrate, and breed. The black-footed albatross ranges throughout the north Pacific and forages and breeds within multiple national jurisdictions and international waters. First, we discuss the protection status of the black-footed albatross and its marine and terrestrial habitat at international, national, and regional levels, followed by a discussion of international and national fisheries regulations that are designed to reduce and monitor seabird bycatch from fisheries operations.

International Protection

Because the black-footed albatross ranges across the jurisdictions of multiple nations (*e.g.,* United States, Canada, Japan, Russia), international agreements may provide some protection for the species (Table 5). Most of the agreements and conventions listed in Table 5 stem from bilateral implementation of the Migratory Bird Treaty Act (see description below), or have provisions similar to the Migratory Bird Treaty Act such that the circumstances under which migratory species, including the black-footed albatross, can be ''taken'' are restricted. In general, these agreements and conventions prohibit the hunting, selling, or purchase of migratory bird species, unless the actions are otherwise permitted (Harrison *et al.* 1992, pp. 266–267).

TABLE 5—CONSERVATION LEGISLATION, CONVENTIONS, AGREEMENTS, AND LISTINGS FOR THE BLACK-FOOTED ALBATROSS

International
United Nations Convention on Migratory Species.
IUCN Red List of Threatened Species.
Agreement on the Conservation of Albatrosses and Petrels.
North American Agreement on Environmental Cooperation.
USA—Canada Convention for the Protection of Migratory Birds.
USA—Mexico Convention for the Protection of Migratory Birds and Game Mammals.

TABLE 5—CONSERVATION LEGISLATION, CONVENTIONS, AGREEMENTS, AND LISTINGS FOR THE BLACK-FOOTED ALBATROSS—Continued

USA—Japan Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment.
USA—Russia Convention Concerning the Conservation of Migratory Birds and Their Environment.
Japan—China Agreement Protecting Migratory Birds and their Habitats.
National
United States of America:
Migratory Bird Treaty Act.
National Wildlife Refuge System Improvement Act.
Birds of Conservation Concern.
Magnuson—Stevens Fishery Conservation and Management Act.
National Marine Sanctuaries Act.
Canada:
Migratory Birds Convention Act.
Species at Risk Act of 2002.
China:
Wildlife Protection Law of 1988.
Japan:
Wildlife Protection and Hunting Law.
Nature Conservation Law.
Mexico:
Norma Oficial Mexicana NOM–059–ECOL–2001 0 (List of Species at Risk).
Regional
British Columbia (Canada):
British Columbia Wildlife Act.

Much of the marine foraging range of the black-footed albatross is the high seas, outside of national jurisdictions. Although some protections may technically be provided in some of these areas through various agreements, such as regional fisheries management organizations, the enforcement and monitoring of such agreements is difficult and as a consequence a large percentage of the black-footed albatross's foraging range has little protection (Gilman *et al.* 2008, p. 13). Some protections may be afforded in marine protected areas (MPAs), which now cover an estimated 4.32% of continental shelf areas and 2.86% of waters within 20 nautical miles of coastlines across the globe (Toropova *et al.* 2010, p. 28), but the marine foraging range of the black-footed albatross is in one of the lowest areas of MPA coverage (Toropova *et al.* 2010, pp. 30–31). On the other hand, most of the terrestrial habitat used for nesting by the black-footed albatross is protected, and a number of marine areas where they are known to forage are protected by refuge or monument designations.

The black-footed albatross is listed in Appendix II of the United Nations Convention on Migratory Species; otherwise known as the Bonn Convention. Species listed in Appendix II have been identified as needing or benefiting from international cooperation (Convention on Migratory Species 2009). The black-footed albatross is included in the IUCN Red List Category as an ''Endangered'' species; this designation was based on projected or suspected population size reduction of greater than 50 percent, to be met within the next 10 years or 3 generations, whichever is the longer (IUCN 2001, pp. 18–19). However, as described above, the results of the models that in part prompted this status change (Cousins and Cooper 2000, entire; Lewison and Crowder 2003, entire) appear to have inadvertently double-counted the effects of mortality from fisheries and have not been supported by others (Niel and Lebreton, 2005, 9 pp.; Arata *et al.* 2009, pp. 48–49). In addition, the lead author of the Lewison and Crowder (2003) paper has pointed out that some of the key assumptions in that paper are now known to be inaccurate, consequently the population trajectories that were projected are not reliable (Lewsion 2007, pers. comm.). We do not consider the IUCN Red List to be an ''existing regulatory mechanism,'' because the IUCN is a non-governmental organization and a listing on the Red List has no legal effect.

The black-footed albatross is not currently listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), but trade of the black-footed albatross is not known to occur. The black-footed albatross is not a species listed under the United Nations Convention on the Conservation of Migratory Species of Wild Animals (UNEP–CMS), and the United States and Canada are not signatories of this agreement (Convention on Migratory Species 2009); therefore, the black-footed albatross receives no protection under this agreement.

The Agreement on the Conservation of Albatrosses and Petrels (ACAP) is a multilateral agreement that seeks to conserve albatrosses and petrels by coordinating international activity to mitigate known threats to albatross and petrel species (Convention on Migratory Species 2009). It is a legally binding treaty that requires signatory governments to take action to reduce albatross and petrel bycatch in fisheries and to protect breeding colonies. Currently, none of the nations in the marine or terrestrial range of the black-footed albatross (*i.e.,* United States, Japan, Canada, Mexico, Russia) are members of this agreement. Therefore, ACAP does not currently offer any protections to the black-footed albatross.

The North American Agreement on Environmental Cooperation (NAAEC), an agreement between the United States, Mexico, and Canada, may provide some protection for the species since the black-footed albatross ranges into Mexico and Canada. The NAAEC was negotiated and is being implemented in parallel with the North American Free Trade Agreement. The NAAEC requires that each party ensure that its laws provide for high levels of environmental protection. Each party agreed to effectively enforce its environmental laws through appropriate means, such as the appointment and training of inspectors, monitoring compliance, and pursuing the necessary legal means to seek appropriate remedies for violations. The Commission for Environmental Cooperation was created under the NAAEC and is authorized to develop joint recommendations on approaches to environmental compliance and enforcement. However, we are unaware of any protection measures specific to the black-footed albatross, or to albatrosses in general, currently in place under NAAEC.

The USA—Canada Convention for the Protection of Migratory Birds establishes a legal framework for protecting migratory birds and establishes regulations for their cross-boundary protection (Treaties 2009). The USA—Mexico Convention for the Protection of Migratory Birds and Game Mammals adopts a system for the protection of certain migratory birds in the United States and Mexico. It provides for enactment of laws and regulations to protect birds by establishing closed seasons and refuge zones (Treaties 2009). The USA—Japan Convention for the Protection of Migratory Birds and Birds in Danger of Extinction and Their Environment prohibits the taking of migratory birds or their eggs, unless there are permitted exceptions for subsistence. The USA—Japan Convention also specifies that each party shall seek means to prevent damage to such birds and their environment, including damage resulting from pollution of the seas (Treaties 2009). The USA—Russia Convention Concerning the Conservation of Migratory Birds and Their Environment (Treaties 2009) specifies each party shall prohibit the taking of migratory birds, the collection of their nests and eggs, and the disturbance of nesting colonies. The treaty also mandates that, to the extent

possible, the parties shall undertake measures necessary to protect and enhance the environment of migratory birds and to prevent and abate pollution or detrimental alteration of that environment. The Japan—China Agreement Protecting Migratory Birds and their Habitats prohibits the hunting of migratory birds and the collection of their eggs, encourages the exchange of data relating to migratory birds, and encourages protection and management of migratory bird habitat (UN 1983, pp. 229–230).

The black-footed albatross is not covered specifically under any of these conventions. Although many of these international agreements or conventions have good intentions and may serve to draw attention to the conservation needs of the black-footed albatross, relatively few extend any real protection to the species. The Agreement on the Conservation of Albatrosses and Petrels has perhaps the greatest potential to provide protection from fisheries bycatch for the black-footed albatross, but since the key nations within the foraging and breeding range of the species are not signatories to the agreement, it can only be considered advisory in effect.

National Protections

National protections, particularly when regulated and enforced in the countries where the black-footed albatross nest, such as the United States and Japan, or where they forage offshore in national waters (United States, Canada, Mexico, Japan, China, Russia, Taiwan, Republic of Korea), have the potential to be beneficial to the species.

United States—The Migratory Bird Treaty Act of 1918 (MBTA) states that it is unlawful ''to pursue, hunt, take, capture or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured.'' It provides penalties for anyone in violation of its provisions. It also implements the commitment of the United States to international conventions with Canada, Japan, Russia, and Mexico (see above) for the protection of a shared migratory bird resource. Each of the conventions protects selected species of birds that are common to both countries. The black-footed albatross is included in the list of migratory birds protected by the MBTA.

The National Wildlife Refuge System is managed by the Service under the National Wildlife Refuge System Improvement Act of 1997 primarily for the benefit of fish, wildlife, and plant resources and their habitats (USFWS 2009b). The National Wildlife Refuge System Improvement Act requires, among other things, that a comprehensive management plan be in place for each refuge. The plan describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wildlife Preservation System; and meets other mandates. As stated earlier, the black-footed albatross nests on the following islands within the National Wildlife Refuge System: Midway Atoll (Midway Atoll NWR), and Pearl and Hermes Reef, Lisianski Island, Laysan Island, French Frigate Shoals, Necker Island, and Nihoa Island (Hawaiian Islands NWR). Midway Atoll NWR, established in 1988, provides nesting habitat for 39 percent of the black-footed albatross population. Approximately 52 percent of black-footed albatrosses nest in the Hawaiian Islands NWR. Therefore, a total of approximately 91 percent of the global black-footed albatross population nests on islands within the National Wildlife Refuge system.

In 2006, the Northwestern Hawaiian Islands (renamed Papahanaumokuakea in 2007) Marine National Monument was designated by Presidential Proclamation 8031; it is described earlier in this document. A management plan for the monument was completed in December 2008. The plan includes strategies to: (1) Restore migratory bird habitat by eradicating invasive species and restore native plant communities; (2) minimize the impact of threats to migratory birds such as habitat destruction by invasive species, disease, contaminants, and fisheries interactions; (3) monitor populations and habitats of migratory birds to ascertain natural variation and to detect changes in that variation that might be attributed to human activities, including anthropogenically caused climate change; and (4) as threats are removed, restore seabird species at sites where they have been extirpated (NOAA *et al.* 2008, pp. 173–179). Human activity is highly regulated, and entry into the monument is prohibited without a permit.

Kaula Island is not part of the National Wildlife Refuge System. Although the island has been used by the U.S. Navy for bombing practice since the early 1950s, the State of Hawaii named Kaula Island a State Seabird Sanctuary in 1972. Permission from the U.S. Navy is required to land on Kaula Island.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) guides management of U.S. fisheries within its EEZ, and specifies that bycatch-related mortality of non-target fish should be minimized. It does not include seabirds in its definition of bycatch, so does not directly mandate seabird bycatch reduction. However, it promotes the development of bycatch reduction technology and authorizes incentives and cooperative bycatch reduction programs between Federal agencies and the industry. The National Marine Fisheries Service (NMFS) has invoked the MSA to reduce seabird bycatch under its mandate to conserve and manage the marine environment (69 FR 1930; January 13, 2004). As described below (Fishery Regulations) NMFS has enacted seabird bycatch minimization measures in multiple fisheries that operate within the range of the black-footed albatross.

The National Marine Sanctuaries Act of 1972 (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce, and specifically NOAA, to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, or esthetic qualities, as National Marine Sanctuaries. Within the range of the black-footed albatross along the western coast of North America, five National Marine Sanctuaries (NMS) have been designated. Four sanctuaries occur off the coast of California: Cordell Bank NMS; Gulf of Farallones NMS; Monterey Bay NMS; and Channel Islands NMS. One sanctuary occurs off the coast of central Washington, the Olympic Coast NMS. In 1989, Congress passed a law that prohibits the exploration for, or the development or production of, oil, gas, or mineral resources in any area of the Cordell Bank NMS (Pub. L. 101–74). The Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92–532,) prohibits leasing, exploration of, producing, or developing oil and gas in the Monterey Bay NMS, and includes a requirement for Federal agencies to consult on activities that are likely to injure sanctuary resources. The ''no-take'' marine reserves and one of the

limited-take marine conservation areas in the Channel Islands NMS includes Federal waters 6 nautical mi (11 km) from land, which prohibits or limits removal of and injury to any Channel Islands NMS resource (74 FR 3216; January 16, 2009).

All of the existing U.S. Federal protections described above assist in the conservation of the black-footed albatross and its habitat in the United States, where 95 percent of the species breeds and nests. These protections have no effect on international waters where the species forages.

Canada—The Migratory Birds Convention Act (1994) (MBCA) is a statute that implements the 1916 MBCA between Canada and the United States (Canada Minister of Justice 1991, entire) and protects the black-footed albatross in Canada. Under the MBCA, the Governor in Council regulates migratory nongame bird species, such as the black-footed albatross, by prohibiting the killing, capturing, injuring, taking, or disturbing of migratory birds or the damaging, destroying, removing, or disturbing of nests; prescribing protection areas for migratory birds and nests; and requiring the control and management of those areas (Canada Minister of Justice 1991, entire). The MBCA does allow for take of migratory birds by aboriginal people, but the black-footed albatross is not known to be hunted by First Nation people (COSEWIC 2007, pp. 38–39). In June 2005, Bill C–15 amended the MBCA to more effectively protect migratory birds and the marine environment from the discharge of harmful substances into marine waters (Fisheries and Oceans Canada (FOC) 2007, p. 4). Bill C–15 clarifies that migratory birds are protected as both individuals and populations, and addresses matters related to birds oiled at sea (FOC 2007, p. 4).

The black-footed albatross was designated a species of ''special concern'' in 2007 under Canada's Species at Risk Act of 2002 (Species at Risk Act, or SARA), legislation similar to the U.S. Endangered Species Act. A species of special concern under SARA is a species of wildlife that may become a threatened or endangered species because of a combination of biological characteristics and identified threats, but this classification in and of itself does not provide any specific regulatory protections to the species. In its assessment and status report on the black-footed albatross, COSEWIC determined that the black-footed albatross was of ''special concern'' based on modeled population declines due to mortality from fishing operations and ingestion of plastic and pollutants (COSEWIC 2007, p. iii).

We consider existing protections in Canada adequate for black-footed albatross conservation, but note that these protections are limited to birds on land and in the generally protected marine environment, and provide no protection to the species on international waters where the majority of black-footed albatrosses forage.

Japan—The Wildlife Protection and Hunting Law was created to protect birds and mammals, to increase populations of birds and mammals, and to control pests through the implementation of wildlife protection projects and hunting controls (Wildlife Protection System 2009). This law restricts hunting to game species. The black-footed albatross is not hunted in Japan and is not otherwise protected under this law. While Japan's Nature Conservation Law enables the establishment of marine areas and nature conservation areas, no marine reserves to protect the black-footed albatross have been created (Harrison *et al.* 1992, p. 269). Torishima Island, where 3.5 percent of the rangewide population of the black-footed albatross nests (67 percent of the Japanese Islands breeding population), has been a protected national natural monument since 1965 and can be visited only with special permission (USFWS 2008a, p. 33). Landing on the island is very difficult due to heavy seas and lack of suitable landing beaches or facilities, and, therefore, it is unlikely that the black-footed albatross is threatened by human activity on the island. The Ogasawara Islands, used for nesting by 1.5 percent of the rangewide black-footed albatross breeding population (30 percent of the breeding population in the Japanese Islands), are included in the Ogasawara National Park. In 2001, Japan's Ministry of the Environment and Ministry of Agriculture, Forestry, and Fisheries submitted the Ogasawara Islands as a candidate for designation as a World Heritage Site. World Heritage is a program of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity (World Heritage 2009). Recognition of the Ogasawara Islands as a World Heritage site could lead to additional protections in the future, but does not presently afford any additional regulatory protections. We are unaware of any protections afforded the black-footed albatross or its nesting sites on the Senkaku Islands, where less than 0.1 percent of the rangewide population and 2 percent of the Japanese Islands population nests.

The existing protections afforded the black-footed albatross on the majority of Japanese Islands where it breeds and nests provide for its conservation, but have no effect in marine environments or in international waters where the species forages.

Mexico—The black-footed albatross is listed as a Threatened Species in Mexico (List of Species at Risk, Annex 2 of the Norma Oficial (the official body of regulations of the Mexican Government) Mexicana NOM–059–ECOL–2001). Threatened species are defined as species in danger of disappearance in the short- to medium-term, if factors that adversely affect their viability, such as causing damage or modification of habitat or directly reducing the size of their populations, continue to operate. Because there currently is no established breeding population of the black-footed albatross in Mexico (see Species Biology, Breeding Distribution), this provides minimal protection to the species. However, if black-footed albatrosses begin nesting and otherwise utilizing the islands of Guadalupe or San Benedicto where they have been sporadically reported on a more consistent basis, then protection while on land will be afforded them.

The protections for black-footed albatross in Mexico are helpful in terms of raising awareness regarding the conservation of the species, and will afford the species protection should it become established there, but at this time protection is limited, since there is not an established breeding population of black-footed albatrosses in Mexico.

Regional Protection

Hawaiian Islands (United States)—Lehua Island and Kure Atoll are managed by HDLNR as State Seabird Sanctuaries. The HDLNR manages State seabird sanctuaries for the conservation and protection of indigenous wildlife, including seabirds (Hawaii Administrative Rules Title 13, Subtitle 5, Part 2, Chapter 125, section 107). Kaula Island has also been designated a State Seabird Sanctuary, although the Navy uses Kaula Island for inert ordnance and gunnery activities, and access to the island is prohibited. Thus, we cannot determine the level of protection this State designation affords to the black-footed albatross or its nesting habitat on Kaula Island.

Alaska (United States)—Alaska has a State endangered species law, but the black-footed albatross is not State-listed as endangered or as a species of concern

(Alaska Department of Fish and Game 2009). The Alaska Department of Fish and Game, Division of Subsistence, has not conducted a survey to assess customary and traditional uses of albatrosses, and comprehensive household surveys have not specifically inquired about uses of albatrosses. However, throughout more than 20 years of comprehensive research on customary and traditional uses of wild animals and plants by Alaska's native peoples, the Division of Subsistence has not recorded harvest of black-footed albatrosses (State of Alaska (SOA), pp. 3–4).

California (United States)—In 1999, the California Legislature approved, and the governor signed, the Marine Life Protection Act (MLPA; Stats. 1999, Chapter 1015). While the black-footed albatross is not expected to benefit directly from this program, the MLPA requires California Fish and Game to prepare and present to the Fish and Game Commission a master plan that will guide the adoption and implementation of a Marine Life Protection Program, which includes a statewide network of marine protected areas. Four of five regional marine protected area planning processes have been developed thus far under the MLPA (California Department of Fish and Game 2011).

Oregon (United States)—Oregon is currently planning a series of marine reserves that would protect waters within 3 mi (4.8 km) of the coast. The first reserve was designated in June 2009 (Oregon Marine Reserves 2009). The level of protection given to black-footed albatrosses in this reserve system is unknown.

Washington (United States)—The State of Washington has developed State Aquatic Reserves to preserve and protect the State's living resources. To date, all of the designated reserve areas are inland, and likely do not afford additional protection of black-footed albatrosses or their foraging habitat.

British Columbia (Canada)—The black-footed albatross is considered to be a species of special concern in British Columbia (B.C.). Species of special concern are particularly sensitive or vulnerable to human activities or natural events. They are considered at risk but are not endangered or threatened (British Columbia Conservation Data Center 2009). The B.C. Wildlife Act is the provincial equivalent of Canada's Migratory Birds Convention Act, and offers the same protections.

Fishery Regulations

In the north Pacific, seven commercial longline fisheries overlap with the black-footed albatross foraging range: the pelagic tuna (*Thunnus* spp.) and swordfish (*Xiphias gladius*) fisheries, the demersal (on or near the seabed) groundfish fishery in the Bering Sea and Gulf of Alaska; the demersal Pacific halibut (*Hippoglossus stenolepis*) fishery in Alaska; the demersal fishery off the west coast of the United States, and the demersal rockfish (*Sebastes* spp.) and halibut fisheries in B.C., Canada (Smith and Morgan 2005, pp. 4–12). Approximately 3,000 pelagic longline vessels from Japan, China, Korea, Taiwan, Mexico, and the United States operate in the north Pacific. In addition, Canada, Japan, Russia, and the United States operate approximately 17,000 demersal longline vessels in the north Pacific (Gilman *et al.* 2005, p. 36). In a satellite telemetry study of black-footed albatrosses captured in Alaskan waters, black-footed albatrosses overlapped with the sablefish (*Anoplopoma stenolepsis*) and Pacific halibut longline fisheries, and also the pot cod (*Gadus macrocephalus*) fishery within the Alaskan EEZ (Fischer *et al.* 2009, pp. 755–756). Black-footed albatrosses that entered international waters spent almost 30 percent of their time there, and may have encountered the albacore tuna (*Thunnus alalunga*) fishery (Fischer *et al.* 2009, p. 757). Of the birds that entered the Canadian EEZ, black-footed albatrosses overlapped with the Pacific halibut longline fishery (Fischer *et al.* 2009, p. 757). Overall, this study demonstrated that post-breeding black-footed albatrosses favor highly productive waters and are likely to encounter fishery activity in their entire preferred foraging habitat, putting foraging birds at risk of incidental mortality.

Reliable population analyses provide evidence that conservation measures implemented thus far have been highly effective in reducing the incidental mortality of black-footed albatrosses (Awkerman *et al.* 2008; Arata *et al.* 2009, pp. 14, 46; Moore *et al.* 2009, p. 444; ACAP 2010, p. 12). In this section we review international conventions and guidance, national plans and fishing regulations, and regional fishery actions enacted to address impacts to seabirds, such as the black-footed albatross, from mortality incidental to fishing operations.

International

The United Nations Convention on the Law of the Sea of 1982 (UNCLOS) is a legally binding international agreement to conserve and manage targeted and associated species within EEZ waters, and to promote cooperation with other states in the conservation and management of living resources in the high seas (Harrison *et al.* 1992, p. 269). It requires nation states to take conservation measures to protect the living resources of the high seas; to cooperate and enter into negotiations with states whose nationals exploit identical living resources, or different living resources in the same area; and to maintain or restore populations of harvested species at levels that can produce the maximum sustainable yields. Canada, China, Japan, Mexico, the Republic of Korea, and Russia are signatories of UNCLOS; however, the United States has not signed it. In addition, the United States, Canada, Japan, and Russia ratified the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (U.N. Fish Stocks Agreement), which entered into force in 2001 (U.N. 2009b). The U.N. Fish Stocks Agreement sets forth conservation and management principles for straddling and highly migratory fish stocks.

Black-footed albatrosses experienced high rates of mortality (an estimated 50,000 birds between 1978 and 1992) in the squid and large-mesh driftnet fisheries, which were operational from the early 1970s until 1992 (Arata *et al.* 2009, pp. 14, 62). These fisheries used large nets, 9 to 37 mi (15 to 60 km) long, vertically suspended in the water, from the surface to 20 to 26 ft (6 to 8 m) deep (Arata *et al.* 2009, p. 13). Due to the high rate of incidental mortality to seabirds, sea turtles, marine mammals, and nontarget fish, the 1992 U.N. General Assembly agreed to a nonbinding resolution, *United Nations Resolution 46–215* (United Nations 1991), to ensure a global moratorium on all large-scale pelagic driftnet fishing on the high seas of the world's oceans and seas. Because the U.N. moratorium applied only to high seas fisheries, driftnet fisheries still exist in the EEZs of some countries. Laysan albatross bycatch has been documented in the Japanese salmon driftnet fishery in the Russian EEZ, and in the United States, large mesh gillnets are used within the EEZ off the coasts of California and Oregon (Arata *et al.* 2009, p. 13). However, by establishing a moratorium on high seas driftnet fisheries, the implementation of Resolution 46–215 in 1992 has removed a significant source of black-footed

albatross mortality from driftnet fisheries throughout its range (Cousins and Cooper 2000, p. iii; Arata *et al.* 2009, p. 62; Moore *et al.* 2009, Figures 3a and 3b, p. 444). At this time we do not consider pelagic driftnet fisheries, as currently managed, to be a threat to the black-footed albatross throughout its range, but as long as driftnets are used within black-footed albatross foraging habitat, some mortality will continue even if not recorded.

The Pacific halibut fishery is managed by the *International Pacific Halibut Commission* (IPHC), a public international organization established by a convention between the governments of Canada and the United States. The fishery operates in Oregon, Washington, Alaska, and British Columbia, Canada. In December 2001, the North Pacific Fishery Management Council required all Pacific halibut vessels greater than 17 m (55 ft) to implement seabird avoidance measures, including the use of streamer lines, which have been shown to be almost 100 percent effective in reducing mortality in species such as albatrosses (Melvin *et al.* 2006, p. 4). Currently, observers are not required on Pacific halibut vessels and bycatch in this fishery is not well understood because no systematic observer program has been in place (Fischer *et al.* 2009, p. 758; ACAP 2010, p. 13). However, although the rangewide impact of the Pacific halibut fishery on the black-footed albatross is not specifically known, estimates obtained from fishing effort data suggest that the number of black-footed albatross killed by U.S. and Canadian halibut fisheries remains relatively low (Arata *et al.* Fig. A4, p. 64; p. 65). Management for the conservation of the black-footed albatross and other seabirds would be improved by more accurate knowledge of the bycatch from the Pacific halibut fishery.

The Food and Agriculture Organization of the U.N. (FAO) recognized the bycatch of seabirds in longline fisheries as a worldwide issue. In March 1997, FAO developed guidelines leading to an International Plan of Action to Reduce the Incidental Catch of Seabirds in Longline Fisheries (IPOA), in which participation is voluntary. The IPOA recommended that States with longline fisheries conduct an assessment of these fisheries to determine if a problem exists with respect to incidental catch of seabirds. If a problem exists, the IPOA states that States should adopt a National Plan of Action (NPOA) for reducing the incidental catch of seabirds in longline fisheries. The NPOA is a plan that a State designs, implements, and monitors to reduce the incidental catch of seabirds in longline fisheries and should: (1) Prescribe appropriate mitigation methods with proven efficiency; (2) contain plans for research and development of the most practical and effective seabird deterrent devices, improve other technologies and practices that reduce the incidental capture of seabirds, and undertake research to evaluate the effectiveness of mitigation measures; (3) prescribe means to raise awareness among fishermen, fishing associations, and other groups about the need to reduce incidental catch of seabirds in longline fisheries; (4) provide information about technical or financial assistance for reducing incidental catch of seabirds; (5) describe and implement outreach programs to improve the understanding of the problem; and (6) prescribe data collection programs to determine incidental catch of seabirds and the effectiveness of mitigation measures, including the use of onboard observers (Food and Agriculture Organization 2009).

Within the range of the black-footed albatross, the United States, Canada, and Japan have each developed NPOAs. The U.S. NPOA was developed in 2001 through a collaborative effort by NMFS, the Service, and the Department of State and is organized around three themes: Action items, interagency cooperation, and international cooperation. Action items include fishery assessments, data collection, prescription of avoidance measures, outreach, education, and reporting (NOAA 2001, pp. 12–14). The Interagency Seabird Working Group, comprising staff from NMFS, the Service, and the Department of State, was formed to continue to address seabird bycatch issues and help coordinate implementation of the NPOA and IPOA.

Canada's NPOA was developed in 2007 and provides an assessment of bycatch levels of seabirds within Canada's longline fisheries, identifies priorities for the NPOA, highlights Canada's legislative framework and international commitments, reviews Canada's integrated fisheries management framework, and presents a series of actions for better identifying bycatch levels and further enhancing efforts to reduce the incidental capture of seabirds (FOC 2007, p. 1). Actions include reviewing and enhancing scientific observer programs, promoting the use of mitigation measures to reduce seabird bycatch, outreach and education about seabird bycatch and the NPOA, and reassessing incidental take at the national level (FOC 2007, pp. 12–16).

Japan developed an NPOA in 2001 and revised the plan in 2009. The plan focuses on four fisheries for which measures for incidental catch are required: (1) Distant-water tuna longline fishing, for vessels over 109,000 kilograms (kg) (120 tons (T)) that fish within the Pacific Ocean; (2) near-shore longline tuna fishing for vessels 9,100 kg to 109,000 kg (10 to 120 T) that operate in near-shore waters and the central and western Pacific; (3) coastal longline tuna fishery for vessels of 9,100 kg to 18,100 kg (10 to 20 T) that operate in Japan's EEZ; and (4) other longline fisheries that operate in Japan's coastal and offshore areas. The plan notes that incidental catch of the black-footed albatross may occur in near-shore areas of Japan during the breeding season (Fisheries Agency Japan (FAJ) 2009, p. 3). The policy for mitigation of bycatch includes the implementation of mitigation measures under the jurisdiction of Regional Fishery Management Organizations, pursuant to their resolutions, and voluntary implementation of mitigation measures outside the jurisdiction of Regional Fishery Management Organizations.

Taiwan is not a member State of the FAO but still developed an NPOA in 2006. The Taiwanese plan includes efforts to reduce the incidental catch of seabirds in longline tuna fisheries, such as providing assistance for the installation of bird avoidance equipment, financial assistance to vessels for bird avoidance equipment, public outreach about bird conservation to the fishing community, and enhancement of international cooperation and scientific research (Fisheries Information Services 2009). We are not aware if Mexico, Korea, China, or Russia have developed NPOAs.

National

Currently, Japan, Canada, and the United States have adopted regulations to reduce seabird mortality in the demersal and pelagic longline fisheries. Below we describe regulations implemented by these nations to minimize bycatch of seabirds in longline fisheries. We also describe the extent of observer coverage in the fisheries, as this relates to the ability to quantify bycatch and evaluate the efficacy of minimization measures.

Japan—The Japanese government requests the collection of information when seabird bycatch occurs, but does not require it (Rivera 2001, p. 2). For a number of years, the Service has attempted to obtain bycatch data from the Japanese Ministry of Environment, but has not received the information

(Balogh 2009, pers. comm.). Due to the lack of data and available information on enforcement and monitoring measures implemented on Japanese longline fishing vessels since the inception of the NPOA, we are unable to determine the impact of Japanese longline fishing on the black-footed albatross. As stated earlier, many plans and agreements have good intentions and, if implemented, stand to have positive effects on the problem of bycatch. Because many of these are voluntary programs and agreements, there is no required management or mitigation; therefore, there is no enforcement of management activities or monitoring or data collection.

Canada—The black-footed albatross foraging range overlaps with the rockfish and halibut fisheries in Canada's EEZ. An estimated 55 to 253 black-footed albatrosses were taken in the B.C. halibut and rockfish fisheries between the years 2000 and 2002 (Wiese and Smith 2003, pp. 46–48). The B.C. commercial halibut fishery is managed internationally by the IPHC (described above). While the IPHC has not implemented mandatory observer programs for the halibut fishery, Fisheries and Oceans Canada (a Canadian Federal Government program) started an observer program in 1999 to more accurately estimate total catch (Wiese and Smith 2003, p. 26). Since 2002, mandatory seabird bycatch minimization measures have been implemented for the halibut and rockfish fisheries in B.C. (COSEWIC 2007, p. 32; Arata *et al.* 2009, p. 65). However, to date there have been no studies to evaluate the effectiveness of this regulation (COSEWIC 2007, p. 32).

In 2006, Canada implemented an Integrated Pacific Groundfish Pilot (Pilot), which provides a comprehensive model for the management of over 50 groundfish species. Under the Pilot, all seabird bycatch must be accounted for in these fisheries (FOC 2007, p. 8). An electronic seabird bycatch monitoring system was started in 2006 that uses logbooks audited using at-sea camera footage. Estimates of bycatch derived from vessel observations and the electronic monitoring system were within 2 percent of each other (FOC 2007, p. 9). Bycatch estimates from the electronic monitoring system may prove to be a cost-effective, efficient technology for monitoring a higher percentage of Canadian vessels. Monitoring and evaluation of seabird bycatch in Canadian rockfish and halibut fisheries was only recently implemented, so the evaluation of its effectiveness has not been fully evaluated; we are thus unable to determine the impact of the Canadian fisheries on the black-footed albatross throughout its range.

United States—NMFS has invoked the Magnuson-Stevens Fishery Conservation and Management Act to reduce seabird bycatch under its mandate to conserve and manage the marine environment (69 FR 1930; January 13, 2004). Observer coverage is established by NMFS on a fishery-specific basis through regulations under the authority of the Marine Mammal Protection Act, the Endangered Species Act, or the Magnuson-Stevens Fishery Conservation and Management Act (Moore *et al.* 2009, p. 438).

Hawaii-based longline fishing is divided into two segments, the tuna (*Thunnus* spp.) and swordfish (*Xiphias gladius*) fisheries, which operate between 0° N and 40° N latitude. Swordfish (shallow-set) fishing effort is generally concentrated between 30° N and 35° N latitude (NMFS 2008, pp. 33–34). The deep-set (tuna) fishery is traditionally considered to operate between 140° W and 180° W longitude and from 0° to 30° N latitude with the majority of deep-set fishing effort taking place south of the Hawaiian archipelago. However, in 2008 and 2009, the majority of fishing effort in the deep-set fishery was north of Hawaii during the first two quarters of the year (NMFS 2009, unpubl.).

Results from the Hawaiian scientific observer program reported in Lewison and Crowder (2003, p. 746), indicated that shallow-set (swordfish) and deep-set (tuna) fisheries differ significantly in seabird bycatch rates, with shallow swordfish sets catching more albatrosses. This is likely a function of shallow sets taking longer to sink, making baited hooks available to scavenging birds for a longer period of time. In the Hawaii-based longline fleet, bycatch of black-footed albatrosses was estimated by Lewison and Crowder (2003, p. 748) to be approximately 2,000 birds per year from 1994 through 2000 for both segments of the longline fishery combined. In March 2001, the U.S. District Court for Hawaii issued an Order suspending all shallow-set longline operations targeting swordfish to address the take of sea turtles in this segment of the fishery (USFWS 2002, p. 3). On May 14, 2002, NMFS published a final rule implementing a series of seabird bycatch minimization measures for Hawaii-based vessels operating north of 23° N, including requiring annual protected species training for vessel owners and operators and a scientific observer coverage rate of 20 percent (67 FR 34408). The measures described in this rule applied only to deep-set (tuna) operations, as the shallow-set segment was still closed as a result of the U.S. District Court ruling.

The shallow-set segment of the longline fishery remained closed throughout 2002 and 2003 and reopened April 2, 2004 under a new management program, which limited fishing effort (69 FR 17329). A revised rule incorporating seabird minimization measures for the shallow-set fishery was issued December 19, 2005 (70 FR 75075). The revised rule required 100 percent coverage of the shallow-set fishery by scientific observers, primarily to ensure compliance with sea turtle bycatch regulations, but also to detect and record seabird bycatch. Since 2005, the estimate of the number of black-footed albatrosses observed caught in the Hawaii-based longline fishery has remained below 300 birds per year, which is significantly lower than rates observed prior to the implementation of seabird bycatch minimization measures (NMFS, unpubl. data).

On March 18, 2009, NMFS proposed Amendment 18 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (74 FR 11518). The amendment proposes to modify the Hawaii-based shallow-set segment of the longline fishery by removing the annual limit on fishing effort, currently limited to 2,100 sets per year, and to increase the number of allowable loggerhead turtle (*Caretta caretta*) interactions. Seabird avoidance measures implemented in 2004 would remain unchanged, and 100 percent of the fishing effort would be observed for bycatch. On December 10, 2009, NMFS published the final rule removing the limit on fishing effort for the shallow-set fishery (74 FR 65460). The increase in fishing effort may result in a modest increase in black-footed albatross bycatch (USFWS 2008b, unpubl.).

Based upon the limited information available regarding the impact of Hawaii's longline fishery on black-footed albatrosses, we do not consider this fishery to currently be a significant threat to the black-footed albatross. Since implementation of seabird bycatch minimization measures in 2002 and revisions to those measures in 2002 and 2004, the number of black-footed albatrosses observed caught in the Hawaii-based longline fishery has been significantly reduced. The shallow-set fishery regulations were changed in 2009 by NMFS so that while there is no annual limit on the number of sets per year, all required seabird avoidance measures and observer coverage were implemented as part of the new rule, which went into effect in January 2010. Even with an increase in the number of

shallow sets per year, black-footed albatross bycatch should continue to be minimized by the implementation of effective bycatch minimization measures. Therefore, we conclude that Hawaii-based longline fishing is not a significant threat to the black-footed albatross.

In Alaska, the demersal longline fishery targets groundfish and halibut. Observer coverage is not required in the halibut fishery (see above), so we are unable to determine the extent and impact of the Alaska-based demersal longline halibut fishery on the black-footed albatross throughout its range. Seabird avoidance measures were implemented in the groundfish fishery beginning in 1997 and mandatory use of seabird avoidance measures went into effect in 2004 (NMFS 2006, p. 2). Observer coverage for the groundfish fishery ranges from 30 to 100 percent, depending on the size of vessel used, type of fish targeted, and type of gear used (50 CFR 679.50). Estimates of black-footed albatross bycatch in the Alaska-based groundfish fishery are derived from two sources of information: (1) The North Pacific Groundfish Observer Program and (2) the NMFS Alaska Regional Office catch accounting system, which reports annual total catch (NMFS 2006, p. 1). Following implementation of seabird avoidance measures on this fleet in 2004, black-footed albatross bycatch decreased approximately 75 percent from an estimated 683 black-footed albatrosses in 1996 to an estimated 167 birds in 2003 (Arata *et al.* 2009, p. 65). Therefore, based on the limited information available regarding the impact of Alaska's demersal longline groundfish fishery on estimated annual bycatch of black-footed albatrosses, we conclude the Alaska-based demersal longline groundfish fishery is not a significant threat to the black-footed albatross.

The Pacific Fisheries Management Council (Council) is responsible for managing the commercial fisheries off the western coast of the United States (California, Oregon, and Washington), so that management of fish stocks will be coordinated throughout the range of the target species. In May 2001, NMFS instituted an observer program to provide total catch monitoring of the west coast groundfish fisheries and required that all vessels, other than Pacific hake (*Merluccius productus*) vessels, carry an observer when notified to do so by NMFS (66 FR 20609; April 24, 2001). In the groundfish fishery, 0 to 30 percent of the landings are sampled (Northwest Fisheries Science Center (NWFSC) 2008, p. 3), and observers opportunistically sample seabird bycatch. Subsequent regulations that published June 7, 2004 provided for mandatory observer coverage for at-sea processing vessels in the Pacific hake fishery (69 FR 31751). In this fishery, approximately 100 percent of all tows are sampled. While no seabird bycatch reduction measures are required for either of these fisheries, the groundfish fishery estimated between 3 and 57 black-footed albatrosses were caught between 2002 and 2005, and an estimated 7 birds were caught in the Pacific hake fishery (NWFSC 2008, pp. 21–37).

In 2007, NMFS published a Fishery Management Plan (Plan) for U.S. West Coast Fisheries for Highly Migratory Species (NMFS 2007). No seabird bycatch minimization measures are required in any of the fisheries covered by the Plan (drift gillnet, coastal purse seine, troll, and California-based longline fisheries), although it recommended that NMFS develop an observer sampling plan (NMFS 2007, p. 59). Only the drift gillnet fishery has had observer coverage, at an average rate of 20 percent, for the past 10 years. No black-footed albatrosses have been observed to be incidentally caught in this fishery. U.S. west coast vessels fishing in the far offshore longline fishery were required to submit logbooks of fishing catch, fishing effort, and bycatch to the California Department of Fish and Game and the Oregon Department of Fish and Wildlife until 2000. Thereafter, logbooks for longline vessels fishing off the west coast were required by NMFS (NMFS 2007, p. D–18). Data from these logbooks showed that 58 black-footed albatrosses were reported as bycatch from the west coast pelagic longline fishery between 1995 and 1999 (NMFS 2007, pp. D–18–19). The Plan proposed that west coast pelagic longline fisheries implement the same seabird avoidance measures used in the Hawaii-based longline fishery, but provided no timeline for undertaking these actions (NMFS 2007, p. D–23). We are unaware of any available information indicating that California, Oregon, and Washington offshore longline fisheries have implemented these seabird avoidance measures.

We conclude, based on the limited information available, that the California, Oregon, and Washington groundfish and Pacific hake fisheries do not significantly impact the black-footed albatross throughout its range. While no seabird bycatch reduction measures are required for either of these fisheries, the groundfish fishery estimated between 3 and 57 black-footed albatrosses were caught between 2002 and 2005, and an estimated 7 birds were caught in the Pacific hake fishery. We do not consider these losses to be significant at the population level. In addition, no black-footed albatrosses have been caught in the drift gillnet fishery in the past 10 years, and we conclude that at this time this fishery is not a threat to the black-footed albatross throughout its range. We also conclude that the California, Oregon, and Washington-based pelagic longline fisheries are not a significant threat to the black-footed albatross throughout its range. While only 58 black-footed albatrosses were reported as bycatch from these fisheries between 1995 and 1999, the Plan (2007) recommended that these fisheries implement the same seabird avoidance measures used in the Hawaii-based longline fishery. Finally, due to the lack of data and available information on seabird bycatch from coastal purse seine, troll, and California, Oregon, or Washington based nonpelagic longline fisheries, we are unable to determine the impact of these fisheries on the black-footed albatross throughout its range, but we are mindful of the potential threat and the need for increased and diligent monitoring of the industry. Although we do not have information specific to the levels of bycatch for these fisheries, based on the observed stable or increasing populations of the black-footed albatross throughout its range, bycatch from these fisheries is apparently not manifested in any negative population-level effects. We, therefore, conclude seabird bycatch from coastal purse seine, troll, and California, Oregon, or Washington-based nonpelagic longline fisheries does not pose a significant threat to the black-footed albatross, but acknowledge the need for more specific bycatch data from these fisheries.

Summary of Factor D

Breeding Range Protections

We have assessed a diverse network of international, national, and regional laws, regulations, and agreements that are meant to provide protection to the black-footed albatross and its habitat (breeding and foraging) and are designed to ameliorate threats rangewide. Based on our analysis of the existing regulatory mechanisms, we conclude that, when implemented and enforced, bilateral migratory species agreements between nations with black-footed albatross populations prevent hunting, harassment, and harm to the species. The Convention on Migratory Species, the Agreement on the Conservation of Albatrosses and Petrels,

and the North American Agreement on Environmental Cooperation provide some benefit to the black-footed albatross and its habitat by way of increased awareness of potential threats, and implementation of environmental protections. The U.S. Migratory Bird Treaty Act and Canada's Migratory Birds Convention Act protect the black-footed albatross as they ban hunting, killing, injuring, or disturbing migratory birds, their nests, or eggs. Canada's Species at Risk Act of 2002 and Mexico's List of Species at Risk recognize the black-footed albatross as requiring special attention, but to the best of our knowledge, these listings do not provide additional protection to the species or its habitat.

With 95 percent of the black-footed albatross population nesting in the protected areas of the Northwestern Hawaiian Islands, we conclude that existing regulatory mechanisms protect and conserve the species within its nesting and breeding habitat in the Hawaiian Islands. In addition, most of the nesting and breeding habitat of the black-footed albatross in the Japanese Islands is protected as either a national park or national monument; existing regulatory mechanisms protect and conserve the species within its nesting and breeding habitat there as well. Based on the above assessment, we do not consider the inadequacy of existing regulatory mechanisms to pose a significant threat to the black-footed albatross in its nesting habitat rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Foraging Range Protections

Many international agreements and national regulatory mechanisms are designed to protect seabirds, including the black-footed albatross, against impacts from some fisheries within their foraging ranges. The U.N. Convention on the Law of the Sea provides guidelines for protecting living resources of the high seas and serves as a medium for international cooperation in management of the resources of the high seas. The U.N. implemented a moratorium (Resolution 46–215) on pelagic drift-net fishing on the high seas in 1992, which successfully eliminated a significant source of mortality for black-footed albatrosses. In 1997 the FAO developed an International Plan of Action to Reduce the Catch of Seabirds in Longline Fisheries, which recommended the development of a National Plan of Action (NPOA) for each nation with longline fisheries. The United States, Canada, Japan, and Taiwan have developed such national action plans. These NPOAs aim to reduce the bycatch of seabirds, such as the black-footed albatross, and to develop better monitoring and data collection methodologies.

Japan, Canada, and the United States have further developed regulations for reducing the bycatch of black-footed albatrosses and other seabirds in their respective fishery operations. The regulations reflect similar techniques as described in their NPOA. In addition, while much of the range of the black-footed albatross is outside of national jurisdictions, some marine areas where the species is known to forage are designated as either national or State marine sanctuaries or reserves. The National Marine Sanctuaries Act of 1972 authorized five sanctuaries within the black-footed albatross' range on the western coast of North America. While the States of California, Oregon, and Washington are each developing marine protected areas, which may offer further protection to the black-footed albatross' marine range, we do not rely on the States' possible designation of such areas.

The vulnerability of the black-footed albatross and other long-lived seabirds to mortality from fisheries bycatch is widely recognized; we acknowledge the need to actively develop and implement agreements for bycatch avoidance measures on an international scale to continue the effective conservation of the species (*e.g.,* Lewison and Crowder 2003, p. 751; ACAP 2010, pp. 13–14), and recognize that all agreements and protective measures may not be fully functioning as intended. Although mortality from bycatch is apparently currently within levels that can be sustained by the species without causing a decline (Arata *et al.* 2009, p. 46), current levels of bycatch may be such that the black-footed albatross cannot realize its full growth potential (*e.g.,* Wiese and Smith 2003, p. 35; Niel and LeBreton 2005, p. 833; Arata *et al.* 2009, p. 46). Nonetheless, although many of the existing agreements could be strengthened or more forcefully implemented, based on the evidence from population counts that demonstrate black-footed albatross populations are currently relatively stable or even slightly increasing across the range of the species, we cannot conclude that the existing regulatory mechanisms are so inadequate as to pose a significant threat to the species.

Based on our review of the best available information, we conclude that the black-footed albatross is not significantly threatened by the inadequacy of regulatory mechanisms related to the Hawaii-based shallow-set longline fishery; the Alaska-based demersal longline groundfish fishery; and the California, Oregon, and Washington groundfish, Pacific hake, and pelagic longline fisheries throughout its range. Due to the lack of information, we cannot definitively determine the extent and quantify the impact of other Alaska-based demersal longline fisheries; other (nonpelagic) longline fisheries based in California, Oregon, and Washington; coastal purse seine and troll fisheries based in the United States; Canadian-based longline fisheries; and longline fisheries based in Japan, Taiwan, China, Korea, Russia, and Mexico.

We are mindful of the potential impacts these fisheries could have on the black-footed albatross. There is no evidence at present that fishery bycatch is causing a decline in the rangewide, Hawaiian, or Japanese populations of black-footed albatross, which are reported to be stable or increasing under current conditions, which includes current levels of fishery bycatch (Cousins and Cooper 2000, p. 23; Arata *et al.* 2009, pp. 37, 51; ACAP 2010, p. 5; Figure 4, this document). However, we also acknowledge that many of the current protective agreements are voluntary in nature, and that bycatch mitigation measures may be lacking in international fleets (Gilman *et al.* 2008, p. 13). The results of models used to estimate demographic parameters and the annual population growth rate of black-footed albatross suggest fishery bycatch, among other factors, may be influencing the somewhat lower than expected annual population growth rate. In fact, Arata *et al.* (2009, p. 46) caution that, while the 2005 fishery bycatch was within the mortality level that can be sustained by the species without causing a decrease, there is much uncertainty of current bycatch estimates for the international pelagic longline fishery, which the authors identify as the largest threat to albatross species worldwide (Arata *et al.* 2009, p. 47). However, the evidence that the population status of the black-footed albatross is currently stable or increasing (Arata *et al.* 2009, pp. 50–51; ACAP 2010, p. 5; Figure 4, this document) leads us to conclude that the threat of incidental bycatch from some fisheries, while very real, is not so severe that it is resulting in population-level impacts such that it poses a significant threat to the species across its range, in the Hawaiian Islands, or in the Japanese Islands.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Here we discuss potential impacts to the black-footed albatross due to contamination from organochlorines (*e.g.,* polychlorinated biphenyls (PCBs), dichloro-diphenyl trichloroethane (DDT)), and ingestion of plastic. In addition, we discuss collisions with airplanes and contamination from oil pollution as potential threats to the species.

Contaminants

Ecological characteristics can be used to estimate the relative risk of contaminants to a species. These characteristics include trophic status (species higher in a food chain are more likely to accumulate persistent pollutants), pollution point sources, location, and lifespan (long-lived individuals have more time to accumulate persistent compounds) (Elliott 2005, p. 89). The black-footed albatross is a long-lived bird and a top predator, and is, therefore, at high risk for the accumulation of contaminants.

Organochlorides (which include organochlorines) and heavy metals have been introduced into the environment through a number of anthropogenic activities. Even though the use of DDT and many pesticides have been banned in the United States and Europe, they continue to persist in the environment for long periods of time (Finkelstein *et al.* 2006, p. 679). Black-footed albatrosses forage throughout the north Pacific, but spend most of their time along continental shelves and convergence zones off the western coast of North America. This area has a documented history of emission of contaminants from agriculture and industry (Finkelstein *et al.* 2006, p. 680).

Numerous studies have documented high levels of anthropogenic contaminants in black-footed albatrosses. In most of these studies, black-footed albatrosses consistently had the highest levels of contaminants and heavy metals in comparison to Laysan albatrosses and other north Pacific seabirds (Jones *et al.* 1996, pp. 1,793–1,800; Auman *et al.* 1997a, pp. 498–504; Ludwig *et al.* 1998, pp. 258–238; Burger and Gochfeld 2000, pp. 37–52; Guruge *et al.* 2001, pp. 389–398; Muir *et al.* 2002, pp. 413–423; Fujihara *et al.* 2003, pp. 287–296; Elliott 2005, pp. 89–96; Ikemoto *et al.* 2005, pp. 889–895; Finkelstein *et al.* 2006, pp. 678–686). Most of these studies attributed the high contaminant levels to the black-footed albatross' trophic position as a top predator; others ascribed the black-footed albatross' geographic foraging area as the reason for high levels of contamination. Plastics at the sea surface layer may also be a source of PCBs, although apparently it is a relatively small source (Ludwig *et al.* 1998, p. 231; Arata *et al.* 2009, p. 20).

In an analysis of PCB levels and stable isotopes of nitrogen in eight species of north Pacific seabirds, black-footed albatrosses had the highest levels for all of the 11 PCB compounds evaluated (Elliott 2005, p. 92). In this study, the analysis of nitrogen isotopes, an indicator of trophic level, related the high levels of contaminants in black-footed albatrosses to its position as a top marine predator (Elliott 2005, pp. 92–93).

When compared to Laysan albatrosses, black-footed albatross eggs have been found to have higher levels of dioxin and furan congeners and PCBs (Jones *et al.* 1996, p. 1,795). Higher levels of PCBs, DDT, and dichloro-2,2′-bis-*p*-chlorophenyl-ethylene (DDE) have been reported in black-footed albatross adults, chicks, and eggs in comparison to Laysan albatrosses; PCB and DDE levels in black-footed albatrosses have been found to be more than twice as high as in Laysan albatrosses (Auman *et al.* 1997a, p. 499). Organochlorides have been documented to reduce reproductive success in birds through embryo mortality and eggshell thinning. However, in a 1996 study, rates of egg-crushing in black-footed albatrosses were found to be similar between 1910 and 1969, and were also similar to rates observed in Laysan albatrosses (Auman *et al.* 1997a, p. 502).

Ludwig *et al.* (1998, entire) found that black-footed albatross eggs had higher levels of PCBs, polychlorinated dibenzo-*p*-dioxins, polychlorinated dibenzofurans, and DDT-group chemicals than Laysan albatross eggs at Midway Atoll between 1993 and 1995. These researchers found that 5.9 percent of black-footed albatross eggs were crushed or cracked (sample size of 153), compared to 4.1 percent of Laysan albatross eggs (sample size of 71) (Ludwig *et al.* 1998, Table 2, p. 227). They also found eggshells of black-footed albatrosses collected in 1994 and 1995 were 3 to 4 percent thinner than eggshells that had been collected prior to World War II, which they characterized as ''modest'' eggshell thinning, likely as a result of organochloride contamination (Ludwig *et al.* 1998, p. 230).

The authors suggested that a few females, perhaps 2 to 3 percent of the black-footed albatross population, had levels of contamination that were high enough to cause direct eggshell thinning effects. Contaminant concentrations in black-footed albatross eggs were considered a ''slight hazard,'' with the possibility of dioxin-like effects that could possibly contribute to increased embryo mortality or endocrine disruption (Ludwig *et al.* 1998, pp. 229–230). Hatch success of black-footed albatross eggs was 78.5 percent (sample size of 2,047), slightly less than the 80.8 percent hatch success observed in Laysan albatrosses (sample size of 1,415) (Ludwig *et al.* 1998, Table 2, p. 227).

Levels of 8 different metals were also compared in 12 species of seabirds nesting on Midway Atoll, and black-footed albatrosses were found to have levels of mercury that could result in adverse effects (Burger and Gochfeld 2000, p. 50); they were below the adverse effects threshold for all other metals examined. Although baseline levels for determining deleterious impacts of various heavy metals specific to the black-footed albatross have not been established, there are some generic threshold levels for adverse effects based on observations from other bird species. In the study of Burger and Gochfeld (2000, p. 49), both adult and young black-footed albatrosses examined exceeded the threshold for mercury known to cause sublethal and reproductive effects in other species, leading the authors to conclude there was some potential for adverse effects, although they note that interspecific variation in effect thresholds is not well understood. The authors further noted the possibility that black-footed albatrosses may be able to convert methylmercury into inorganic mercury in their tissues, citing a suggestion made by Kim *et al.* (1996, as referenced in Burger and Gochfeld 2000), and that in such a case the levels observed in their study may not be cause for concern (Burger and Gochfeld 2000, p. 50). Such a hypothesis, however, remains to be tested. Overall, the high concentrations of organochlorine contaminants and heavy metals observed in black-footed albatrosses are a cause for concern (*e.g.,* Arata *et al.* 2009, pp. 18–20), although to date the evidence for negative impacts on individual birds is limited and no population-level effects have been observed.

In the Japanese Islands, levels of mercury in black-footed albatross eggs from Torishima Island were higher than mercury levels documented for other seabirds and were higher than documented threshold levels for adverse effects in other bird species (Ikemoto *et al.* 2005, p. 892). Lead levels in black-footed albatross chicks on Torishima

Island were below levels of lead-poisoned Laysan albatross chicks from Midway Atoll, and no symptoms of lead poisoning, such as droop-wing syndrome, were observed (Ikemoto *et al.* 2005, p. 893). Kunisue *et al.* (2006, entire) studied dioxins and related compounds in black-footed and short-tailed albatrosses from Torishima Island. They found concentrations of dioxins were greater in black-footed albatrosses than in short-tailed albatrosses, and that toxic equivalents of the eggs of both albatross species exceeded the thresholds observed in some other species of wild birds (Kunisue *et al.* 2006, pp. 6920, 6925). Although they note that sensitivity for biochemical effects varies widely between species and the sensitivity of albatross for dioxin-like effects is not known, they also found some evidence of what they characterize as ''potential dioxin-like alterations'' in the black-footed albatross (Kunisue *et al.* 2006, p. 6925).

In addition to the contribution of trophic level in determining contamination level, high levels of organochlorides have also been attributed to the foraging locations of black-footed albatross. High levels of toxaphene, an organochloride pesticide used in the 1970s, PCBs, and DDT in black-footed albatrosses were recorded in 1994 and 1995 from Midway Atoll, the site of a major military base (Muir *et al.* 2002, p. 415). Also, toxaphene, DDT, and other organochloride pesticides were widely used in California from the 1970s until the mid-1980s. Black-footed albatrosses use the coastal waters of western North America as a primary foraging area, and it was concluded by some (Muir *et al.* 2002, entire; Finkelstein *et al.* 2006, entire) that this was a likely cause for the higher relative levels of these compounds when compared to Laysan albatrosses, which forage mainly in the northwest Pacific ocean (Muir *et al.* 2002, p. 419). As documented in other studies, black-footed albatrosses had higher concentrations of PCBs, DDT, and mercury than Laysan albatrosses (Finkelstein *et al.* 2006, p. 681). Contaminant levels, carbon and nitrogen stable isotope ratios, and satellite telemetry data were analyzed, and it was found that organochloride and mercury contaminant levels are higher in the California Current, where black-footed albatrosses forage, than in high-latitude north Pacific waters where Laysan albatrosses forage (Finkelstein *et al.* 2006, pp. 681–685).

The PCB and DDT levels documented in this study were higher than levels measured by others (Auman *et al.* 1997a, pp. 498–504). Finkelstein *et al.* (2006, p. 684) found levels of dichloro-diphenyl-dichloroethylene (DDE) in black-footed albatross and Laysan albatross that were 160–360 percent higher in samples from 2000 and 2001 than in samples from 1992 and 1993, and the proportional increase found in black-footed albatross over this time period was twice that observed in the Laysan albatross. Based on the information available to the Service regarding organochlorides and heavy metal contamination of black-footed albatrosses, black-footed albatrosses have been exposed to organochlorides and heavy metal contaminants through their food resources or their nonbreeding season foraging areas along the western coast of North America. We conclude that high levels of organochloride and heavy metal contaminants are present in black-footed albatrosses and may have contributed to the low levels of eggshell thinning observed in the Hawaiian Islands in the mid-1990s; however, the limited evidence does not suggest any population-level impact on the black-footed albatross.

Between 1994 and 1995, Ludwig *et al.* (1998, p. 232) estimated 90 percent of the human-caused mortality in black-footed albatrosses on Midway Atoll was likely from fisheries bycatch, and 10 percent was due to contaminants. Despite observations of high levels of contaminants in black-footed albatrosses at Midway, however, counts of breeding birds there demonstrate that the population on Midway Atoll has been increasing at an average annual rate of 1.3 percent, and has steadily increased since 2000 (ACAP 2010, p. 6 and Figure 2B). The steady increase in this population, particularly in recent years when chicks born during the study period in the mid-1990s would be entering the breeding population, indicates that these contaminants are not acting as a limiting factor. In the Japanese Islands, populations of the black-footed albatross have also been steadily increasing (see Figure 4) despite the high levels of lead, mercury, and dioxins and related compounds detected in eggs and chicks there. Therefore, we cannot conclude that these contaminants pose a significant threat to the species across its range, in the Hawaiian Islands, or in the Japanese Islands, as we have no evidence that they are causing a decrease in any of the populations.

Plastic Ingestion

In the north Pacific gyre, a massive accumulation of plastic has been named the ''great Pacific garbage patch'' or ''Pacific trash vortex'' in the popular press. It is a floating mass of largely plastic debris approximately the size of the state of Texas, roughly located between 20° N and 40° N and divided into eastern and western halves connected by the subtropical convergence zone. The eastern patch is located between the Hawaiian Islands and the coast of California; the western patch occurs off the coast of Japan (Young *et al.* 2009, p. e7623).

Ingestion of plastics by seabirds is well-documented, especially in surface-feeding seabirds that are likely to confuse plastic particles with their prey (Spear *et al.* 1995, pp. 123–146; Nevins *et al.* 2005, p. 4). Several studies have documented plastic consumption by black-footed albatrosses (Sileo *et al.* 1990a, pp. 665–681; Sievert and Sileo 1993, pp. 212–217; Auman *et al.* 1997b, pp. 239–244; Blight and Burger 1997, pp. 323–325). As plastic particles float on the surface where adults forage for food, chicks are accidentally fed plastic by adults, and it accumulates in the proventriculus (upper stomach and gizzard). Likely due to their surface feeding behavior, Laysan and black-footed albatrosses are known to ingest the widest variety and largest volumes of plastics of most seabirds studied (Sileo *et al.* 1990a, p. 666). Plastic is usually regurgitated by Laysan albatross chicks in the two months prior to fledging, but black-footed albatross chicks continue to accumulate plastic in the proventriculus during this period; it is not known if they fledge carrying their plastic load or if they regurgitate it between leaving the nest and departing the island (Sievert and Sileo, 1993, pp. 215–216).

In a study conducted in 1986 and 1987, 67 to 100 percent of Laysan and black-footed albatross chicks (combined) had plastic in their proventriculi (Sileo *et al.* 1990a, p. 674). Although the percentage of black-footed albatrosses with large volumes of plastic increased through the chick-rearing period, large volumes of plastic were not found to have an effect on weight gain or wing growth (Sievert and Sileo 1993, pp. 214–215), and the authors concluded there was no correlation between the volume of ingested plastic and survival or growth of black-footed albatross chicks (Sievert and Sileo 1993, p. 216). The results of this study suggested that ingested plastic was not a significant direct cause of death in albatross chicks (Sievert and Sileo 1993, p. 216), consistent with the results of an earlier study of Laysan albatross chicks on Midway Atoll (Sileo *et al.* 1990b, entire). In discussing their results that none of the deaths of the Laysan chicks

studied were attributable to ingested plastic, the authors concluded ''the absence of plastic-related mortality was unexpected'' but supported by other research (Sileo *et al.* 1990b, p. 336, and references therein).

Other research has also suggested that ingested plastic does not cause significant direct mortality in albatross chicks, and Auman *et al.* (1997, p. 243) concluded that ''plastics may add considerable stress to individuals, but probably have little or no direct impact at the population level.'' Although there are relatively few studies that definitively attribute seabird mortality to ingestion of plastic (*e.g.,* Fry *et al.* 1987, p. 339; Pierce *et al.* 2004, p. 187), other research suggests numerous potential indirect impacts of plastics, including possible starvation due to a false sense of satiation, impaction of the intestines, ulceration of the stomach, reduced growth and body mass, increased PCB and organochlorine assimilation, and dehydration (summarized in Auman *et al.* 1997b, pp. 242–243; Pierce *et al.* 2004, p. 187; Rios *et al.* 2007, p. 1230). However, in a study of 38 species of seabirds in the West North Atlantic over a 14-year period, Moser and Lee (1992, p. 93), reported no evidence of such detrimental effects on the health of these species, despite increasing levels of plastic ingestion over the study period.

Dehydration was the most common cause of death for both black-footed albatross and Laysan albatross chicks studied at Midway Atoll in 1986 and 1987 (Sileo *et al.* 1990b, p. 329; Sievert and Sileo 1993, p. 212). Plastic ingestion was implicated directly in the death of only 1 out of 174 chicks examined (Sievert and Sileo 1993, p. 214). However, the decreased survivorship of Laysan albatross chicks that ingested high volumes of plastic in 1986 (there was no difference in chick survival for either species in 1987) led the authors to suggest that dehydration may be a possible indirect effect of plastic ingestion. The researchers suggested a high volume of plastic in the proventriculus may reduce the amount of food, and hence water, that a chick can accept during feeding (Sievert and Sileo 1993, p. 216). However, they also note the negative correlation between volume of ingested plastic and survival in this single year of observation may be coincidental, and controlled experiments are needed to test their hypothesis.

Plastics contain a variety of additives, and at sea, the surface of plastic particles absorbs organochloride compounds, particularly PCBs (Ryan 1990, p. 628; Rios *et al.* 2007, p. 1230; Teuten *et al.* 2009, p. 2027). Plastic ingestion may also increase the absorption of toxic compounds, but a correlation between polychlorinated biphenyls and plastic load in the great shearwater (*Puffinus gravis*) has been only suggestive (Ryan 1990, p. 623). Studies directly evaluating this relationship have not been conducted and are needed for the black-footed albatross because the foraging behavior of this species makes it particularly vulnerable to plastic ingestion.

In summary, although studies suggest numerous potential indirect effects of plastic ingestion, we did not find evidence that plastic ingestion by black-footed albatrosses is a significant source of mortality or reduces body condition in the species. Studies of the potential health impacts of plastic ingestion on other procellarids (seabirds in the same order as the black-footed albatross) have suggested that, although individual birds may suffer adverse consequences, population-level effects have not been observed (Moser and Lee 1992, p. 93; Auman *et al.* 1997b, p. 243). Research specific to the black-footed albatross concluded that there was no correlation between the volume of ingested plastic and survival or growth of black-footed albatross chicks (Sievert and Sileo 1993, p. 216). As we have no evidence that plastics are acting to limit the population of black-footed albatrosses, we conclude that plastic ingestion is not a significant threat to the black-footed albatross throughout its range, in the Hawaiian Islands, or in the Japanese Islands.

Oil Pollution

Because there is much overlap between the range of the black-footed albatross and the short-tailed albatross, the potential threat reported for the short-tailed albatross from oil contamination might be applicable to the black-footed albatross. In the final rule to list the short-tailed albatross as an endangered species (65 FR 46643; July 31, 2000), we describe potential risks to the species in the form of oil spills and future oil development. The final rule also discusses petroleum toxicity and short-tailed albatross thermoregulatory problems that could result from oil contamination. Petroleum exposure may: (1) Compromise seabird thermoregulation through the fouling of feathers; (2) cause direct toxicity through ingestion; (3) contaminate the birds' food resources; (4) reduce prey availability from toxic effects on prey species; and (5) cause embryotoxic effects (USFWS 2008a, p. 26).

The impact of an oil spill depends on many factors, including the type, rate, location, and volume of oil spilled, weather and oceanographic conditions, time of year of the spill, distribution of birds near a spill, and the behavior of birds in reaction to oil (Ford *et al.* 1987, p. 549; McCrary *et al.* 2003, p. 46). Sources of potential oil spills in the range of the black-footed albatross could include transport ships, small oil slicks, and current and future offshore drilling off the western coast of North America. In California, 23 oil platforms operate in Federal waters, and 10 platforms operate in State waters, distributed over an area of approximately 12,400 mi^2 (20,000 km^2) (McCrary *et al.* 2003, p. 43). All oil and gas produced offshore is transported to shore by pipeline.

The Department of the Interior, Bureau of Ocean Energy Management, Regulation, and Enforcement, Offshore Energy and Minerals Management, (BOEMRE) regulates oil platforms in Federal waters. Since 1969, BOEMRE has implemented a facility and pipeline inspection program, developed and updated oil spill response, and developed an oil spill response network of corporations and volunteers (McCrary *et al.* 2003, pp. 46–47). No new oil leases have been issued in California since 1984, and the Pacific outer continental shelf waters of California, Oregon, and Washington are under a moratorium from new leases until June 30, 2012 (McCrary *et al.* 2003, p. 45).

In Alaska waters, the Department of Environmental Conservation, Division of Spill Prevention and Response is responsible for protecting the land, waters, and air from oil and hazardous substance spills. It regulates spill prevention through spill prevention plans, and reviews and approves response plans (SOA 2009, p. 2). Alaska requires oil spill contingency plans for offshore oil and gas exploration facilities, crude oil transmission pipelines, and oil flow lines and gathering lines. The Industry Preparedness Program requires facilities and vessels to develop State-approved oil spill response and contingency plans, to establish a facility-wide spill prevention program, and to ensure that personnel, equipment, and financial resources are available to respond to the spills (SOA 2009, p. 2). No oil drilling takes place near the black-footed albatross' nesting islands in Hawaii, and the State of Hawaii has extensive oil spill prevention and response measures in place.

Nevertheless, in the unlikely event of an oil spill, it is possible that black-footed albatrosses could be affected while foraging at sea. The wide foraging

range of the black-footed albatross and consequent dispersion of the global population makes it unlikely, however, that any large portion of the population would be simultaneously affected by an oil spill. In contrast, the short-tailed albatross would be vulnerable to the potential impacts of an oil spill due to its very small population numbers and extremely limited range. In addition, there is little evidence that oil pollution has been responsible for lasting population declines of seabirds. While considered to be catastrophic and dramatic events, oil spills likely account for only a small proportion of the total annual seabird mortality (Thompson and Hamer 2000, p. 97) and do not have the chronic mortality population effect of other threats, such as bycatch and marine pollutants (Finkelstein *et al.* 2010, p. 329).

Based on our evaluation of the best available scientific and commercial data, we conclude that oil spills do not pose a significant threat to the black-footed albatross across its range, in the Hawaiian Islands, or in the Japanese Islands.

Collisions With Aircraft

Collisions with airplanes were considered a potential threat to the endangered short-tailed albatross (65 FR 46643; July 31, 2000), thus it has been suggested that collisions with aircraft at Midway Atoll could impact black-footed albatrosses, especially if regular commercial air service were to be resumed on Midway. However, resumption of commercial air service on Midway is not anticipated (Klavitter 2009, pers. comm.). Since the closure of Midway Phoenix Corporation's activities at Midway Atoll in 2002, air traffic consists of 36 flights a year under contract with the U.S. Fish and Wildlife Service, or roughly 3 flights per month, with occasional additional visitor flights as well (Schulmeister 2011, pers. comm.). Aloha Airlines discontinued charter service to Midway in 2004, further reducing air traffic to the atoll. Currently, only Asheviille Jet Charter and Management is under contract with the Service to provide flights to Midway Atoll on any regular basis (Schulmeister 2011, pers. comm.).

To minimize the risk of bird–aircraft collisions, the Service implements protocols to reduce and document seabird collisions. During the Laysan and black-footed albatross breeding season (November through July), flights to and from Midway Atoll occur after dark, and staff sweep the runway and remove any birds that are present (Klavitter 2009, pers. comm.). Transient aircraft (primarily U.S. military or U.S. Coast Guard C–130s) are required to obtain prior permission from the Refuge Manager before landing at Midway Atoll. Black-footed albatrosses do not nest on the runway or its buffer as these areas are paved and unvegetated and are not suitable for nesting by this species. Few collisions with black-footed albatrosses occur, and when they do occur it is primarily with young fledglings that move onto the runway after it has been swept. The black-footed albatross' preference for nesting near the shoreline also decreases the likelihood of being struck by aircraft. Nonetheless, the incidence of seabird–airplane collisions (between 3 and 35 black-footed and Laysan albatrosses combined annually) on Midway has not significantly impacted the black-footed albatross population (USFWS 2004, p. 8).

The Service operates a very limited air service to Tern Island to support ongoing conservation and research activities on the island. Prelanding and takeoff sweeps are conducted to remove birds from the active runway (USFWS 2004, p. 33). Air service to Tern Island from Honolulu occurs approximately once every 2 to 6 weeks. However, the runway at Tern Island is unlit, so flights must occur during the daytime. Rates of bird–aircraft interactions are higher than on Midway Atoll, but most strikes are with sooty terns (*Sterna fuscata*) (USFWS 2004, pp. 7–8). We do not have specific information regarding the number of black-footed albatrosses involved in strikes. Altogether, the number of airline flights in the Northwestern Hawaiian Islands is limited, collisions with black-footed albatrosses are infrequent and measures are in place to avoid them, and mortality of black-footed albatross from airplane strikes has been limited. There is no evidence that collisions with aircraft poses any significant threat to black-footed albatrosses in the Hawaiian Islands, nor do we expect any change in this situation. We have no information to indicate that collisions with aircraft pose any threat to black-footed albatrosses nesting in the Japanese Islands. Based on our evaluation of the best available scientific and commercial information, we conclude that collisions with aircraft do not pose a significant threat to the black-footed albatross across its range, in the Hawaiian Islands, or in the Japanese Islands.

Summary of Factor E

Regarding other natural or manmade factors affecting the continued existence of the species, we conclude that organochloride and heavy metal contaminants are present at relatively high levels in black-footed albatrosses, based on studies that measured the levels of these contaminants in black-footed albatross adults, chicks, and eggs. Some black-footed albatross egg mortality due to egg crushing is likely caused by organochloride contamination, and toxic equivalents of some contaminants (*e.g.,* dioxins) exceed the toxicity thresholds for some other wild birds, but the sensitivity of black-footed albatrosses is not known. Despite the high levels of contaminants in black-footed albatrosses, deleterious effects on individuals have not been reported, nor have any population-level effects been observed. We, therefore, conclude that the available evidence does not support a conclusion that organochlorine and heavy metal contamination poses a significant threat to the species rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Like other surface-foraging seabirds, black-footed albatrosses accidentally ingest plastics while foraging, and feed ingested plastic to their chicks. Although we recognize the possible indirect effects of dehydration or exposure to PCBs resulting from plastic ingestion may be cause for concern, we found no information indicating that plastic ingestion is a significant source of black-footed albatross mortality or reduces body condition in chicks or adults, nor did we find evidence that plastic ingestion is having any population-level effects on the species. Therefore, we conclude that plastic ingestion is not a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Potential impacts from contamination from oil spills and future oil development are not likely to be a threat to the species' nesting habitat in the Hawaiian Islands because no oil drilling takes place there, and extensive oil spill prevention and response measures are in place in the Hawaiian Islands. We have no information to indicate that oil spills pose a threat to the nesting habitat of black-footed albatrosses in the Japanese Islands. However, because black-footed albatrosses disperse and forage rangewide over vast areas of the ocean and could possibly encounter oil anywhere, they are vulnerable to oil spills, both individually and in small foraging groups, but not at a scale that is likely to have population-level effects. We, therefore, do not consider oil spill contamination to be a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Hazards to black-footed albatrosses from collisions with aircraft at Midway Atoll and Tern Island where there is air traffic are not a threat because flights are limited, prelanding and takeoff protocols are in place to remove birds from active runways, and the incidence of collisions is low. We have no information to suggest that collisions with aircraft pose a significant threat to the Japanese Islands population of the black-footed albatross. We, therefore, do not consider collisions with aircraft to pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

Synergistic Interactions Between Threat Factors

We have evaluated individual threats to the black-footed albatross throughout its range. The black-footed albatross faces myriad potential stressors, including the effects of climate change, impacts to nesting habitat from nonnative plants, avian disease, the ingestion of plastics, and heavy metal contamination. In considering whether the threats to a species may be so great as to warrant listing under the Act, we must look beyond the possible impacts of these stressors in isolation, and consider the potential cumulative impacts of all of the threats facing a species.

In making this finding, we considered whether there may be cumulative effects to the species from the combined impacts of existing stressors such as contamination by organochlorines and heavy metals, plastic ingestion, and fisheries bycatch, such that even if each stressor individually does not result in population-level impacts, perhaps cumulatively they would be considered to do so. Population data for the black-footed albatross demonstrates a stable or increasing trend in the global population, based on data from 1955 through 2003 (Arata *et al.* 2009, p. 46), as well as in the Hawaiian Islands breeding population (data from 1998 through 2009; ACAP 2010, pp. 5–6) and the Japanese Islands breeding population (data from 1957 through 2010; Hasegawa 2010, pers. comm.). This stable or increasing trend suggests that the possible synergistic interactions between the aforementioned stressors do not significantly limit the population of the black-footed albatross across its range, in the Hawaiian Islands, or in the Japanese Islands. If the existing stressors cumulatively acted as a limiting factor on the black-footed albatross global population, we would expect a population decline during the time periods examined. Therefore, we conclude that synergistic interactions between existing stressors do not pose a significant threat to the black-footed albatross, across its range, in the Hawaiian Islands DPS, or the Japanese Islands DPS.

In the case of the black-footed albatross, additional potential sources of synergistic interactions between stressors are posed by the effects of climate change. For example, it has been suggested that, although plastic ingestion has not been demonstrated as a direct cause of mortality, it may be that ingestion of plastics may contribute to dehydration (Sievert and Sileo 1993, p. 216). If this were the case, then increased ambient temperatures anticipated as an effect of future climate change could exacerbate this stressor, as the increased need for evaporative cooling under higher ambient temperatures would also lead to an increased vulnerability to dehydration. However, the possible linkage between plastic ingestion and dehydration has only been suggested (Sievert and Sileo 1993, p. 216); more research is needed to understand the possible synergistic effects of increased ambient temperatures on black-footed albatrosses that ingest plastics.

In addition, it has been suggested that the invasive nonnative plant *Verbesina encelioides* may potentially reduce the capacity for convective cooling for the black-footed albatross by interfering with wind flow, an impact that would also be exacerbated by higher ambient temperatures. Currently there is no evidence that increased ambient temperatures and *V. encelioides* will synergistically negatively impact the ability of black-footed albatrosses to regulate, and this effect remains only suggested at this point in time. Additionally, as noted above, there are effective control programs in place for *V. encelioides* and other nonnative plants, such that we do not anticipate they will have a significant impact on the black-footed albatross in the future, even in the face of increased ambient temperatures. Any possible future impacts of climate change on these putative threats would therefore be speculative in the absence of more conclusive data supporting such associations.

There are many questions about how the effects associated with climate change may impact the black-footed albatross, and the answers are unclear at this point in time. Data in this regard are extremely limited, and all projections of future conditions have varying degrees of confidence associated with them. This in turn leads to even greater uncertainty when the potential synergistic interactions between projected variable future conditions are considered. For example, as discussed above, we anticipate that the area of nesting habitat available to black-footed albatrosses will gradually decrease as sea level rises; the extent of future sea level rise and land area loss is uncertain, and the extent of available nesting habitat that may be lost is also unknown. Although we anticipate that black-footed albatrosses may shift nesting locations over time in response to such events, we do not have any data to indicate the time scale over which such shifts may occur, what proportion of the population may find suitable new nesting sites, or the potential maximum density of nesting seabirds that may serve as a limiting factor on the islands utilized by the species. If greater numbers of black-footed albatrosses move inland to nest, on those islands where nonnative *Casuarina equisetifolia* trees occur, they could pose an increased threat to nesting black-footed albatrosses if storm frequency or intensity increases, due to falling limbs. Other potential changes associated with possible increases in storm frequency or intensity and sea level rise are increased overwash events.

All of these potential threats may interact to affect the black-footed albatross to varying degrees. However, as discussed above, all of these potential future threats have varying degrees of confidence and uncertainty. Interactions between multiple projected threats, each with its own degree of uncertainty, further compounds that lack of confidence, resulting in even greater uncertainty. When we additionally consider uncertainties as to whether such events will affect black-footed albatrosses (for example, as discussed above, there is little overlap in timing between nesting and tropical storm events) or how black-footed albatrosses will respond to such events, we conclude that we do not have sufficient information available to us to reliably assess the impacts of possible synergistic interactions of threats related to the effects of climate change on the black-footed albatross. The time scale and extremity at which the potential impacts of future effects of climate change will be realized are too uncertain, as is the potential behavioral response of the species. At this point in time, given the complex and uncertain nature of the effects associated with climate change, we can only conclude that continued research and monitoring is important in the detection of potential future effects of synergistic interactions between the effects of climate change

and other potential threats to the black-footed albatross.

Finding

As required by the Act, we considered the five factors in assessing whether the black-footed albatross is endangered or threatened throughout all or a significant portion of its range. We have assessed the best available scientific and commercial data regarding the threats facing the black-footed albatross. We reviewed numerous information sources including literature cited in the petition, information in our files, and information submitted to us following our 90-day petition finding (72 FR 57278; October 9, 2007), and a second information solicitation period (74 FR 43092; August 26, 2009), and we consulted with recognized experts and other Federal and State agencies on potential threats to the black-footed albatross and its marine and terrestrial habitat. Such potential threats include: Historical habitat modification; invasive species; effects from climate change including sea level rise, changes in tropical storm frequency and intensity, changes in marine productivity, and increases in ambient temperature; overutilization; disease and predation; bycatch in fisheries; contamination by PCBs and other pollutants; plastic ingestion; oil spills; and collisions with aircraft. To determine whether these risk factors individually or collectively cause the species to be in danger of extinction throughout its range, or will likely do so within the foreseeable future, we first considered whether the factors, either singly or in combination, were causing a population decline, or were likely to do so within the foreseeable future.

Under Factor A (''Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range''), we evaluated the effects of: Military activities, volcanic activity; natural gas development; invasive plant species; and climate change in the forms of sea level rise and inundation, changes in tropical storm frequency and intensity, decreased marine productivity, and increased ambient temperature.

We found that the black-footed albatross historically experienced range reduction and habitat modification by armed forces during their occupation of black-footed albatross breeding islands in the western and central Pacific, up to and following World War II. Currently, however, at least 96 percent of black-footed albatross nesting habitat rangewide and including both the Hawaiian and Japanese Islands is protected, now and into the future, on islands that are managed for the conservation of native wildlife and their habitat, and it is unlikely that a military presence will be necessary on these islands in the foreseeable future.

Loss of breeding habitat from volcanic activity is a potential threat only on Torishima Island in the western Pacific. However, because the black-footed albatross population on Torishima Island comprises only 3.5 percent of the rangewide breeding population of the species, we do not consider volcanism to be a significant threat to black-footed albatrosses rangewide. Furthermore, evidence from past volcanic events on Torishima demonstrates black-footed albatrosses are either likely to survive such events, probably because a large portion of the population is at sea when they occur, or are likely to eventually recolonize from nearby islands; therefore, we do not consider volcanic activity to be a significant threat to black-footed albatrosses in the Japanese Islands.

We have no evidence to suggest that the potential exploration of undersea natural gas resources is a threat to black-footed albatrosses on the Senkaku Islands, which comprise less than 0.1 percent of the population of black-footed albatross nesting rangewide. It is considered unlikely that these resources exist in the area and, due to weak economic interest and the disputed sovereignty of the islands, such exploration is not likely to occur within the foreseeable future. Even if such development were to occur in this area, we have no evidence to suggest that undersea gas development near these islands would pose a significant threat to the species rangewide or in the Japanese Islands.

Verbesina encelioides is an invasive nonnative plant that forms dense thickets and reduces black-footed albatross nesting habitat on Kure Atoll, Midway Atoll, and Pearl and Hermes Reef in the Hawaiian Islands, but is not known from the islands in the western Pacific. *Casuarina equisetifolia* is a nonnative tree that has been identified as a threat to ground-nesting seabirds on Midway Atoll, as it degrades nesting habitat and potentially interferes with flight. We found that the Service, NOAA, and HDLNR are implementing control measures to reduce infestations of these nonnative plants in the Hawaiian Islands, and they are developing protocols to prevent the accidental introduction of new, nonnative plants on all of the black-footed albatross nesting islands within the PMNM. We have no evidence that either of these nonnative plants is currently causing any significant impact on the nesting populations of black-footed albatrosses on these islands, and we expect the active management of these invasive species to continue. We have no information indicating that invasive nonnative plants pose any threat to black-footed albatrosses nesting in the Japanese Islands. For these reasons, we conclude that, as currently managed, *V. encelioides, C. equisetifolia,* and other nonnative plants are not a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands.

The majority of models of future climate change available use a 100-year timescale to predict changes through the year 2100. However, projections over the next 30 to 50 years are more reliable than projections for the second half of the twenty-first century, which become increasingly uncertain and variable after 50 years into the future (Cox and Stephenson 2007, pp. 207–208). We, therefore, conclude that 50 years is the maximum timeframe over which to assess the effects of threats to the black-footed albatross associated with climate change. In particular due to great uncertainty surrounding the possible behavioral response of the black-footed albatross to changes in habitat suitability and availability associated with sea level rise, we assessed the threat associated with sea level rise over several time intervals, from 10 to 20 years into the future, 30 to 40 years into the future, and 50 years into the future. We considered 50 years to be the limit of our ability to reasonably project the future conservation status of the species, based on considerations of projected environmental conditions and uncertainties in the response of the species.

Because of the lack of study and high degree of uncertainty in the available information on the impacts of sea level rise on black-footed albatross nesting habitat in the Hawaiian or Japanese islands, it is challenging to draw any firm conclusions regarding the immediacy and significance of sea level rise on black-footed albatross nesting success on these islands. Our analysis indicates that over the maximum timeframe of 50 years, a 2.4-ft (0.7-m) sea level rise will likely result in beach erosion in some (seaward) areas and beach deposition in other (lagoon-side) areas on Tern, Sand, and Eastern Islands, and Kure Atoll (which together support approximately 48 percent of black-footed albatross breeding pairs) or may affect only a limited area of geomorphically similar islands (*e.g.,* Lisianski and Laysan), which support approximately 35 percent of black-footed albatross breeding pairs), as has

been observed in other Pacific atoll islands in response to rising sea level. Approximately 12 percent of black-footed albatrosses nest on high islands (*e.g.,* Kaula, Lehua, Necker, and Nihoa in the Hawaiian Islands, and the Japanese Islands of Torishima, Senkaku, and Ogasawara), and breeding birds on these islands will not be affected by sea level rise in the foreseeable future.

Although sea level rise is expected to result in the loss of land area in the Hawaiian Islands, and we acknowledge that this loss of land may disproportionately affect black-footed albatross nesting habitat, the best available information indicates that sufficient land area will likely remain to support large numbers of black-footed albatross, albeit at likely reduced numbers. Based on the anticipated relatively gradual nature of sea level rise over time, the amount of land area projected to remain, the ability of black-footed albatrosses to nest in habitats other than sandy beaches, the apparent capacity of these islands to support high densities of nesting seabirds, and the evidence suggesting that black-footed albatrosses may have the behavioral flexibility to seek out new nesting sites, we believe the black-footed albatross may shift to new nest sites over time in response to sea level rise in the Hawaiian Islands. Therefore, based on our assessment of the best available information, we do not believe sea level rise and coastal inundation pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands, now or within the foreseeable future.

Climate models indicate that winter wave heights in black-footed albatross breeding areas in the Northwestern Hawaiian Islands and the Japanese Islands will remain unchanged in the foreseeable future. Wave surge and overwash events are not unusual and are expected to continue to occur occasionally and impact breeding black-footed albatrosses in localized areas. We have no evidence to suggest, however, that future impacts will be any different than those currently experienced by the species. Based on our assessment of the best available information, we do not believe winter wave inundation poses a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands, now or within the foreseeable future.

While tropical storm intensity (strength) is projected to increase slightly (*i.e.,* by a few percent) in the central Pacific (*e.g.,* Hawaiian Islands), the frequency of tropical storms is projected to decrease. Slight increases (*i.e.,* a few percent) over the next 100 to 200 years in both the frequency and intensity of tropical storms are projected in the western Pacific (*e.g.,* Japanese Islands). These projected increases are not expected to significantly affect black-footed albatrosses within the foreseeable future, as the birds arrive at their nesting sites in mid- to late-October and begin laying eggs in mid-November. Since the tropical storm season in the central and western Pacific ends in November or early December, the period of overlap between bird arrivals at nesting sites and the end of the tropical storm season is likely only a few weeks. While there may be some short-term impacts to black-footed albatross nesting success due to the potential short-term overlap of the arrival of birds at nesting sites at the end of the tropical storm season, we do not anticipate these impacts to significantly affect the breeding population of the species. Therefore, based on our assessment of the best available information, we do not believe storm frequency and intensity pose significant threats to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands, now or within the foreseeable future. We are unable to assess the effects of potential climate-induced changes in the duration of tropical storm seasons on the black-footed albatross due to the lack of studies and available information.

We found no direct evidence that changes in ocean productivity due to climate change have affected the black-footed albatross, or are likely to do so within the foreseeable future. Based on the limited available information, it appears that black-footed albatross breeding success (*i.e.,* the number of breeding pairs and fledging success) has not reflected any response to past El Niño and PDO events (seasons of low marine productivity). This is likely because, unlike many other albatrosses and seabirds, the black-footed albatross forages across a wide range of ocean temperatures and is found aggregating where sea surface temperatures are relatively warm, thereby buffering the impacts of reduced marine productivity on this species compared to other seabirds. However, there are documented instances of decreased reproductive success and even reproductive failure associated with El Niño for other seabird species, especially in years of severe ENSO events. Therefore, we cannot discount the possibility that a severe ENSO event, or a series of severe ENSO events associated with climate change, will not affect the reproduction of black-footed albatrosses in the future. However, based on the best available scientific evidence before us at this time, we have no information to suggest that such events are likely to pose a significant threat to the black-footed albatross within the foreseeable future.

Similarly, we found no evidence to suggest the projected 2.32 to 3.15 °F (1.29 to 1.75 °C) increase in annual mean SAT associated with climate change by the year 2065 (Meehl *et al.* 2007, p. 763, Table 10.5) will have a significant adverse effect on black-footed albatrosses. The black-footed albatross is adapted to nesting in a hot environment with intense solar radiation, and the evidence suggests they are capable of responding to the projected average increases in air temperature within the foreseeable future. Whether future extreme high temperatures may exceed the thermal tolerance of the black-footed albatross cannot be determined at this time, and based on the lack of critical information to inform any such evaluation, any conclusion with regard to this question would be highly speculative.

Therefore, based on the best available scientific information, we conclude that potential sea level rise and coastal inundation, winter wave heights, changes in tropical storm frequency and intensity, potential decreased marine productivity, or increased ambient temperature associated with climate change do not pose a significant threat to the black-footed albatross rangewide, in the Hawaiian Islands, or in the Japanese Islands, now or within the foreseeable future.

Based on our evaluation of Factor A, using the best available scientific and commercial data as summarized above, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range does not pose a significant threat to the black-footed albatross across its range, in the Hawaiian Islands, or in the Japanese Islands, now or in the foreseeable future, to the extent that the species is presently in danger of extinction, or likely to become so within the foreseeable future. Although climate change will undoubtedly impact the black-footed albatross to some degree, the immediacy, severity, and magnitude of any such impacts at a population level are uncertain at this time.

Under Factor B (''Overutilization for Commercial, recreational, scientific, or educational purposes''), we determined that historically the black-footed albatross was exploited for its feathers and eggs. Because there is no demand for or exploitation of black-footed albatross feathers and eggs, and there are protections in place for its nesting

habitat, we find that overutilization is not a significant threat to the black-footed albatross throughout its range, in the Hawaiian Islands, or in the Japanese Islands, to the extent that the species is presently in danger of extinction, or likely to become so within the foreseeable future.

Under Factor C (''Disease or Predation''), we found that while avian pox was once thought to be a significant source of mortality, recent information suggests that most infected individuals recover from the disease. Avian pox is transmitted by mosquitoes, which are known only from the islands of Lehua, where only 25 breeding pairs of black-footed albatrosses were last reported, and Midway Atoll. We have no evidence to suggest that avian pox poses a significant threat to the black-footed albatross in the Japanese Islands. Other diseases such as H5N1 avian influenza, West Nile virus, and avian cholera have not been documented in the Hawaiian Islands or the breeding range of the black-footed albatross in the Japanese Islands of the western Pacific. The remoteness of the island breeding habitat of the black-footed albatross decreases the likelihood of transmission of these diseases to these areas. Therefore, we concluded that avian pox, H5N1 avian influenza, West Nile virus, and avian cholera do not threaten the black-footed albatross throughout its range, in the Hawaiian Islands, or in the Japanese Islands, now or in the foreseeable future, to the extent that the species is currently in danger of extinction, or likely to become so within the foreseeable future.

Predation by nonnative rats is not a significant threat to black-footed albatrosses in the Northwestern Hawaiian Islands, where 95 percent of the rangewide population nest, because: (1) There are no rats on these islands; and (2) protocols are in place to prevent the inadvertent introduction of rats to these islands or to eradicate them if they are accidentally introduced. Additionally, rat eradication efforts have been initiated and are continuing on Lehua Island, where less than 0.01 percent of the black-footed albatross population breeds. Rats have been reported on Torishima Island and the Ogasawara Islands, where 5 percent of the black-footed albatross population breeds. However, the breeding colonies on these islands are reported to be increasing despite the presence of rats; therefore, we do not consider rats to be a significant threat. Depredation by sharks is a known and natural source of seabird mortality, but we found no evidence that predation by sharks on black-footed albatross fledglings is a significant threat to the species in the Northwestern Hawaiian Islands, where 95 percent of the breeding population occurs. We are unable to determine the extent and impact of shark predation on black-footed albatrosses in the western Pacific islands due to the lack of study and available information, but we have no evidence to suggest that it may pose a significant threat to the Japanese Islands population. We conclude, therefore, that predation by either rats or sharks is not a significant threat to the black-footed albatross throughout its range, in the Hawaiian Islands, or in the Japanese Islands, now or in the foreseeable future, to the extent that the species is currently in danger of extinction, or likely to become so within the foreseeable future.

Under Factor D (''Inadequacy of Existing Regulatory Mechanisms''), we looked at the diverse network of international, national, and regional laws, regulations, and agreements that may provide protection to the black-footed albatross and its habitat and effectively ameliorate threats rangewide. National and international agreements and laws provide some protection for the black-footed albatross from hunting, killing, harassment, and harm. Ninety-five percent of the black-footed albatross breeding population is protected by the PMNM, the National Wildlife Refuge System, and the State of Hawaii Seabird Sanctuary system. The Japanese breeding colonies on Torishima Island and the Ogasawara Islands are protected within a national natural monument and a national park, respectively. While much of the marine foraging range of the black-footed albatross is outside of national jurisdictions, some areas are protected within national or State marine sanctuaries or reserves, including five sanctuaries within the species' range off the western coast of North America.

International agreements and national regulatory mechanisms protect the black-footed albatross against impacts from some fisheries in its foraging range. The U.N. Convention on the Law of the Sea provides guidelines for protecting living resources of the high seas and serves as a medium for international cooperation in management of the resources of the high seas. U.N. Resolution 46–215 eliminated a significant source of mortality for black-footed albatrosses from pelagic drift-net fishing. The United States, Canada, Japan, and Taiwan have developed plans to reduce the bycatch of seabirds such as the black-footed albatross, and to develop better monitoring and data collection methodologies. The United States, Canada, and Japan have developed regulations for reducing the bycatch of black-footed albatrosses and other seabirds in their respective fishery operations. However, we note that many of the existing agreements are nonbinding, or key nations are not signatory to relevant international agreements; therefore, some of these agreements provide little protection to the black-footed albatross and other seabirds.

Based on our review of the best available information and for the reasons described in *Fishery Regulations* (above), we find that the black-footed albatross is not significantly threatened by the Hawaii-based longline fishery; the Alaska-based demersal longline groundfish fishery; or the California, Oregon, and Washington longline or groundfish and Pacific hake fisheries throughout the species' range now or in the foreseeable future. We cannot definitively determine the extent or quantify the impact of international demersal longline fisheries, but recent studies caution that there is much uncertainty in the bycatch estimates of the international pelagic longline fishery, which is considered the greatest threat to all albatross species throughout their ranges. Despite the shortcomings of many of the existing regulatory mechanisms, the present population status of the black-footed albatross, with rangewide populations stable or increasing, does not indicate that these mechanisms are inadequate such that they may be resulting in population-level effects on the species.

We are mindful of the potential impacts that these fisheries could have on the black-footed albatross, but conclude there is no evidence at present that fishery bycatch is causing a decline in the rangewide population of black-footed albatross, which is reported to be stable or increasing in both the Hawaiian Islands and the Japanese Islands breeding populations (Arata *et al.* 2009, p. 51; ACAP 2010, p. 5; Figure 4, this document). Therefore, based on our evaluation of the best available scientific and commercial data, we conclude the inadequacy of existing regulatory mechanisms does not threaten the black-footed albatross throughout its foraging range, now or in the foreseeable future, to the extent that the species is currently in danger of extinction or likely to become so within the foreseeable future.

Under Factor E (''Other Natural or Manmade Factors Affecting Its Continued Existence''), we found that organochlorine and heavy metal contaminants are present in high levels in black-footed albatrosses. Some egg mortality in black-footed albatrosses due

to egg crushing is likely caused by organochloride contamination, and contaminant levels observed exceed toxicity thresholds known for other avian species. The sensitivity of black-footed albatrosses to these contaminants is not known, however, and deleterious effects have not been reported in adult birds or chicks, or reflected at the population level. Therefore, we conclude that organochlorine and heavy metal contaminants have not been shown to be a significant threat to the black-footed albatross.

We also found that, like other seabirds, black-footed albatrosses ingest plastics while foraging and accidentally feed ingested plastics to their chicks. Investigations on the effects of plastic ingestion in black-footed albatross showed plastics are not a direct cause of mortality, nor was plastic ingestion correlated with body condition or survivorship of chicks. The primary cause of chick mortality was dehydration, but it has also been suggested that plastic ingestion may prevent chicks from feeding properly, which may result in dehydration. This hypothesis remains to be tested. The ingestion of plastics and consequent potential for dehydration is of concern, however, particularly when considered in conjunction with predicted increased ambient temperatures. However, at present there is no information indicating plastic ingestion is a significant source of black-footed albatross mortality, or that it reduces body condition in chicks or adults. Furthermore, it has not been demonstrated to have any population-level effects. We, therefore, conclude that plastic ingestion is not a threat to the black-footed albatross throughout its range, in the Hawaiian Islands, or in the Japanese Islands, now or in the foreseeable future, to the extent that the species is currently in danger of extinction or likely to become so within the foreseeable future.

Black-footed albatrosses forage singly or in small groups, and potential impacts from contamination from oil spills and future oil development are not a significant threat to the species because: (1) Few individuals would be exposed at any one time and oil spill prevention measures are in place; (2) we have no evidence of active oil drilling in the proximity of black-footed albatross nesting islands; and (3) response measures are in place in the species' foraging range in the Hawaiian Islands and the western coast of North America. Hazards to black-footed albatrosses from collisions with aircraft at Midway Atoll and Tern Island are not significant as a result of limited flights and prelanding and takeoff protocols to remove birds from active runways on these islands. We have no information to suggest that either oil spills or aircraft collisions pose significant threats to black-footed albatross breeding in the Japanese Islands. Therefore, based on the best available scientific and commercial data, we find that other natural or manmade factors do not threaten the black-footed albatross throughout its range, in the Hawaiian Islands, or in the Japanese Islands, now or in the foreseeable future, to the extent that the species is currently in danger of extinction, or likely to become so within the foreseeable future.

On the basis of our status review, we conclude that listing the black-footed albatross rangewide is not warranted at this time. Our standard for determining whether listing is warranted is whether a species is presently in danger of extinction throughout all or a significant portion of its range (endangered) or is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (threatened). We acknowledge the black-footed albatross faces a variety of threats, and that some of these threats have had significant impacts on the species in the past. However, our evaluation of the best available scientific and commercial data does not suggest that these threats, either singly or in combination, are currently of such severity or magnitude as to place the species in danger of extinction at the present time, or within the foreseeable future. We reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment periods following our 90-day petition finding, and consulted with recognized albatross experts and other Federal, State, and local resource agencies within the historical range of the black-footed albatross, both in the Hawaiian Islands and in the western Pacific (Japanese Islands). Following this exhaustive review, we find that listing the black-footed albatross as endangered or threatened across its range is not warranted at this time.

In making this finding, we recognize there have been historical declines in black-footed albatross populations, and that the more recent declines observed from roughly the late 1950s through 1980s were primarily attributed to driftnet and longline fishery bycatch. Although the environmental effects from climate change will undoubtedly impact the species, we conclude that significant impacts to the black-footed albatross within the foreseeable future are not likely.

At this time, we conclude the best available scientific and commercial data suggests the population of black-footed albatross is large and robust enough to withstand the threats facing the species, as evidenced by the primarily stable or even slightly increasing populations across its range, and we have no evidence to suggest the species is in danger of extinction or is likely to become in danger of extinction within the foreseeable future.

Evaluation of the Black-Footed Albatross as Two Potential Distinct Population Segments

After assessing whether the species is endangered or threatened throughout its range, we next consider whether a distinct vertebrate population segment (DPS) meets the definition of endangered or threatened.

To interpret and implement the distinct vertebrate population segment (DPS) provisions of the Act and Congressional guidance, we, in conjunction with the National Marine Fisheries Service, published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS policy, two basic elements are considered in the decision regarding the establishment of a population of a vertebrate species as a possible DPS. We must first determine whether the population qualifies as a DPS; this requires a finding that the population is both: (1) Discrete in relation to the remainder of the species to which it belongs; and (2) biologically and ecologically significant to the species to which it belongs. If the population meets the first two criteria under the DPS policy, we then proceed to the third element in the process, which is to evaluate the population segment's conservation status in relation to the Act's standards for listing as an endangered or threatened species. These three elements are applied similarly for additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants.

In accordance with our DPS Policy, we detail our analysis of whether a vertebrate population segment under consideration for listing may qualify as a DPS. As described above, we first evaluate the population segment's discreteness from the remainder of the species to which it belongs. Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a

consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

If a vertebrate population segment does not meet either of the DPS's criteria for discreteness, then no further analysis is necessary. However, if we determine that a vertebrate population segment is discrete under one or more of the conditions described in the Service's DPS policy, then we consider its biological and ecological significance to the larger taxon to which it belongs, in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Because precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

The petition asked us to: (1) List the black-footed albatross as endangered or threatened throughout its range; or (2) list the ''Hawaiian breeding population'' of the black-footed albatross as a DPS, and (3) list the ''Japanese breeding population'' of the black-footed albatross as a DPS. We have already addressed the entity identified in the first petition request (black-footed albatross throughout its range), above (see Finding). To address the second and third petition requests regarding DPSs, we first need to clearly define the geographic boundaries of the breeding populations, both the Hawaiian and the Japanese; this involves looking at the range-wide breeding population. Through this process we additionally considered whether the islands of San Benedicto and San Guadalupe in the eastern Pacific (Mexico) and Wake Island in the central Pacific (Marshall Islands) might be considered DPSs, since black-footed albatross have on occasion attempted to nest there. We determined that even though they would likely be considered geographically separate from both the Hawaiian and Japanese islands, neither Wake Atoll nor the islands in Mexico would be included in our DPS analysis because although infrequent attempts at breeding have been documented (Rice and Kenyon 1962b, p. 379; Pitman and Ballance 2002, p. 13; Rauzon *et al.* 2008, pp. 14–15; Henry 2007, pers. comm.; Arata *et al.* 2009, p. 39; Hebshi 2010, pers. comm.), there is no evidence that these islands support established populations of black-footed albatrosses and, therefore, they cannot be defined as a ''breeding population'' (see Species Biology, Breeding Populations) that might serve as the subject of a DPS evaluation.

With the Hawaiian Islands and the Japanese Islands defined as two breeding population segments of black-footed albatross, we analyzed them separately to determine if they were ''discrete.'' If one or both of these population segments met any of the DPS policy criteria for discreteness, we next analyzed the population segment(s) to determine its significance to the taxon as a whole.

Definition of the Hawaiian Islands Population Segment of the Black-Footed Albatross

The Hawaiian Islands population segment encompasses the breeding range of the black-footed albatross within the Northwestern Hawaiian Islands (also known as the Leeward Islands), which are a group of small islands, atolls, and reefs in the northwest portion of the Hawaiian Islands archipelago, and the islands of Kaula (southwest of Niihau) and Lehua (north of Niihau) just off Kauai in the main Hawaiian Islands. The Northwestern Hawaiian Islands include Kure Atoll, Midway Atoll, Pearl and Hermes Reef, Lisianski Island, Laysan Island, French Frigate Shoals, Necker Island, Nihoa Island, Maro Reef, and the Gardner Pinnacles (Conant *et al.* 1984, pp. 378–379). Currently black-footed albatrosses breed on all of the Northwestern Hawaiian Islands (Naughton *et al.* 2007, p. 5), except the Gardner Pinnacles and Maro Reef. Less than 1 percent of the Hawaiian Islands population segment breeds on Kaula and Lehua islands. The best available information indicates the known historical breeding range (see Breeding Distribution) of black-footed albatrosses in the Hawaiian Islands archipelago includes the same locations where they are currently found. Other islands where they were historically reported but may not have bred are Wake Atoll (Marshall Islands archipelago) and Johnston Atoll (Rice and Kenyon 1962b, pp. 378–380; Naughton *et al.* 2007, p. 5).

Definition of the Japanese Islands Population Segment of the Black-Footed Albatross

The Japanese Islands population segment encompasses the breeding range of the black-footed albatross in the western Pacific, off the coast of Japan, and includes approximately 13 islands: Izu-Torishima Island (also known as Torishima, in the Izu Shoto Islands group); 9 islands within the Ogasawara Islands group, and 3 islands within the Senkaku Islands group (Eda *et al.* 2008, p. 109) (see Breeding Distribution above). The best available information indicates the known historical breeding range of black-footed albatrosses in the western Pacific also included Agrihan and Pagan islands in the Commonwealth of the Northern Marianas Islands, 2 of the Kazan-retto islands (also known as the Volcano Islands), including Iwo Jima; the isolated Minami Torishima Island (Marcus Island); at least 11 islands within the Mukojima islands; 2 of the Hajajima Islands; Minamitori-shima Island; Nishino-shima Island within the Bonin Island group; and several islands within the Senkaku Island group (Chiba *et al.* 2007, p. 5; Kawakami *et al.* 2006, p. 187). We considered for our analysis the entire western Pacific island groups of Izu, Ogasawara, and Senkaku, which encompass the current known breeding range of black-footed albatrosses in the western Pacific.

Discreteness of the Hawaiian Islands Population Segment of the Black-Footed Albatross

The breeding population is markedly separated from other breeding populations as a consequence of either physical, physiological, ecological, or behavioral factors; quantitative measures of genetic or morphological discontinuity may provide evidence of this separation—The Hawaiian breeding population of black-footed albatross is separated from the remainder of the species in the Japanese Islands by the approximately 2,500 mi (4,000 km) of ocean between Kure Atoll in the Northwestern Hawaiian Islands and the Hahajima Island cluster in the Ogasawara Islands in Japan. While this distance is well within the species' maximum estimated dispersal distance, the nesting site fidelity of the female albatross has effectively delimited the breeding range of the two populations. As previously described above (see Species Biology, Life History), female black-footed albatrosses have a high level of affinity to the nest site; over 99 percent of black-footed albatross females breed on the island where they hatched and fledged (natal site) and establish their own nesting site nearby where they return annually (Rice and Kenyon 1962a, pp. 532–533). Furthermore, this behaviorally dictated reproductive isolation is strongly supported by genetic assessments of the population structure among black-footed albatrosses from three islands in the Hawaiian Islands and from the Japanese islands of Izu-Torishima (Walsh and Edwards 2005, p. 292; Eda *et al.* 2008, p.110) and two of the Ogasawara Islands (Eda *et al.* 2008, p. 110). In these combined assessments it was found that the Hawaiian population is widely divergent from the Japanese population, representing four unique haplotypes out of nine known haplotypes, which is an indicator of long isolation (Eda *et al.* 2008, pp. 112–115; Chambers 2010, pers. comm.). Furthermore, these results are indicative that the species has been undergoing this divergence for several hundred millennia (Eda *et al.* 2008, p. 114–115). Thus, not only is the Hawaiian population spatially separated from the remainder of the taxon in Japan, it also has been temporally separated as indicated through unique haplotypes.

Discreteness Summary for the Hawaiian Islands Population of the Black-Footed Albatross

Our DPS policy states that a population segment of a vertebrate species may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. We find that the Hawaiian Islands population segment of the black-footed albatross is reproductively isolated from the remainder of the taxon in Japan as a result of: (1) The strong behavioral tendencies of black-footed albatross adult females to return to breed near their natal site and to return to an established nesting site in subsequent years; (2) the physical separation of approximately 2,500 mi (4,000 km) of ocean separating the two breeding populations, which further enforces the behavioral separation, and thus ensures that they breed within a localized geographic area of the Hawaiian Islands; and (3) the genetic uniqueness of the Hawaiian Islands population, which underscores both the spatial and temporal separation of this population from the remainder of the taxon in Japan.

We did not examine the second discreteness criterion, ''Delimitation by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant with regard to conservation of the taxon,'' because although the species is delimited by international governmental boundaries, it was not necessary to further pursue this line of analysis, as discreteness of the Hawaiian Islands breeding population of the black-footed albatross is already determined through a ''marked separation'' of the population from the remainder of the taxon.

Significance of the Hawaiian Islands Population Segment of the Black-footed Albatross

Having determined that the Hawaiian Islands population of the black-footed albatross meets the discreteness criterion for a DPS, our DPS policy directs us to consider scientific evidence of the biological and ecological importance of this discrete population to the remainder of the taxon to which it belongs. In this case, we evaluate the biological and ecological significance of the Hawaiian Islands population segment of black-footed albatrosses relative to the taxon as a whole, which includes the breeding population of the taxon in Japan. A discrete population is considered significant under the DPS policy if it meets one of the four elements identified in the policy under significance, or can otherwise be reasonably justified as being significant. Here we evaluate the four potential factors suggested by our DPS policy in evaluating significance.

(1) Persistence of the Discrete Population Segment in an Ecological Setting That Is Unusual or Unique for the Taxon

In considering whether the population occupies an ecological setting that is unusual or unique for the taxon, we evaluate whether the habitat includes unique features not used by the taxon elsewhere in its range and whether the habitat shares many features common to the habitats of other populations within the range of the taxon.

The small islands, atolls, and reefs of the Northwestern Hawaiian Islands, and Lehua and Kaula islands, where the Hawaii population of the black-footed albatross breeds, can be characterized as primarily low-elevation volcanic islands, reefs and atolls, some having sheer-faced cliffs and others sloping to the ocean (Rice and Kenyon 1962b, pp. 369–377). All support only sparse coastal scrub or grassy vegetation on a sandy or volcanic soil substrate (Cousins and Cooper 2000, p. 5; Awkerman *et al.* 2008, p. 20; Arata *et al.* 2009, p. 10). The remainder of the taxon in Japan breeds on volcanic islands (Torishima Island and the Ogasawara Islands) (Naughton *et al.* 2007, p. 5) and on nonvolcanic islands (the Senkaku Islands) (Naughton *et al.* 2007, p. 5), but not on atolls or reefs as these land forms are likely nonexistent in the western Pacific. Most of the best available information describes the nesting characteristics of the taxon in the Hawaiian Islands; very little information is available detailing the nesting characteristics for the remainder of the taxon in Japan. However, based on the best available scientific information, we have determined that the habitat for the Hawaiian Islands population does not represent an ecological setting that is unusual or unique relative to the habitat available throughout the entire taxon's range. We have no evidence to suggest that black-footed albatrosses nesting in the Hawaiian Islands utilize habitat with distinctly different physical characteristics from that used by black-footed albatrosses in Japan, aside from a difference in elevation. Black-footed albatrosses nesting in the Japanese Islands appear to utilize habitat with similar physical structure as black-footed albatrosses in the Hawaiian Islands. In general, nests are a depression in a sandy or volcanic ash substrate, surrounded by a rim of sand or volcanic soil (Arata *et al.* 2009, p. 10); in the Japanese Islands where there are no sandy beaches the nests are high

upslope, whereas in the Hawaiian Islands nests are most often located on exposed beaches at the beginning of the vegetation line (Cousins and Cooper 2000, p. 5; Awkerman *et al.* 2008, p. 20; Arata *et al.* 2009, p. 10).

Based upon limited information to differentiate the foraging habits of the Hawaiian Islands population (Fernandez *et al.* 2001, p. 4; Awkerman *et al.* 2008, p. 14) from the remainder of the taxon in Japan (Kawakami *et al.* 2006, pp. 189–190), it appears that the foraging habits of breeding black-footed albatrosses in the Hawaiian Islands are similar to the taxon as a whole. Breeding birds tend to forage close to breeding islands while chicks are young and require continuous feeding and then take longer foraging trips as chicks get older (Hyrenbach *et al.* 2002, pp. 289–294; Kawakami *et al.* 2006, pp. 189–190). During the nonbreeding season, birds from both geographic areas forage throughout the north Pacific (Hyrenbach *et al.* 2002, p. 298). Given the available information on the diversity and extent of ecological settings of the black-footed albatross in the remainder of its range in Japan, we conclude that the discrete population of black-footed albatross in the Hawaiian Islands is not ''significant'' within the meaning of the DPS policy as a result of persistence in a unique or unusual ecological setting.

(2) Loss of the Population Segment Would Result in a Significant Gap in the Range of the Taxon

Loss of the Hawaiian Islands population segment of the black-footed albatross, when considered in relation to the taxon as a whole, would mean the loss of the great majority of the entire breeding range of the taxon. The Hawaiian Islands' black-footed albatross population comprises approximately 95 percent of the current breeding population of the species as a whole. In addition, assessments of genetic divergence between the birds from Hawaii and birds from Japan provide evidence of four haplotypes, out of nine haplotypes known, which are unique to the Hawaiian Islands population (Eda *et al.* 2008, p. 112–114). Such divergence in a species of bird suggests reproductive isolation over several hundred millennia with only rare movements of females between the Hawaiian and Japanese islands (Eda *et al.* 2008, p. 114; Chambers 2010, pers. comm.). It follows that, should a catastrophe decimate the Hawaiian population segment, the likelihood that repopulation of the Hawaiian islands would be aided (*i.e.,* ''rescued'') by birds from the remainder of the taxon in Japan would be remote due to the combined deterrents of the 2,500 mi (4,000 km) distance between the two population segments and the inherent site fidelity of the entire taxon, which together limit the occurrence of successful colonization events.

Nonetheless, there is biological value in maintaining the redundancy provided by two geographically discrete population segments in the event that either is catastrophically decimated, as the remaining population would represent the sole possible source for recolonization. The loss of the Hawaiian Islands population of black-footed albatross would: (1) Reduce the genetic diversity of the remainder of the taxon by almost 50 percent (see details under (4), below); (2) reduce the breeding population of the entire species by 95 percent; (3) reduce the breeding range of the taxon geographically to the islands off the coast of Japan; and (4) eliminate any taxonomic redundancy that could be imperative to the maintenance of the species in the event of a catastrophe. Therefore, we find that the gap in the range resulting from the loss of the black-footed albatross breeding population in the Hawaiian Islands would be significant to the taxon as a whole.

(3) Evidence That the Discrete Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Elsewhere as an Introduced Population Outside Its Historical Range

The Hawaiian Islands population does not represent the only surviving natural occurrence of the black-footed albatross throughout the range of the taxon; therefore, we conclude that the discrete population of the black-footed albatross in the Hawaiian Islands does not meet the significance criterion of the DPS policy based on this factor.

(4) Evidence That the Discrete Population Segment Differs Markedly from Other Populations of the Species in Its Genetic Characteristics

The genetic structure of the black-footed albatross was assessed in two separate analyses (Walsh and Edwards 2005, pp. 289–295; Eda *et al.* 2008, 109–116). Through these analyses it was determined that the Hawaiian Islands breeding population is genetically differentiated from the remainder of the taxon in Japan (Walsh and Edwards 2005, pp. 291–292; Eda *et al.* 2008, 112–115; Chambers 2010, pers. comm.). Of the nine known haplotypes described, four were found to be unique to the Hawaiian Islands population (H2, H3, H4, H5), and a fifth (H1) was nearly unique (Eda *et al.* 2008, 112–115). Although these haplotypes occur at low frequencies, they are nonetheless indicators of long isolation between the Hawaiian Islands population and the remainder of the taxon in Japan, and their loss would mean a significant reduction of almost 50 percent of the total known genetic diversity of the taxon as a whole (Chambers 2010, pers. comm.). We find, therefore, that the Hawaiian Islands breeding population differs markedly from the rest of the taxon because there are genetic characteristics present in this population that are not observed in the remainder of the taxon in Japan.

Significance Summary

We find the discrete population segment of black-footed albatross that occurs in the Hawaiian Islands is significant to the species as a whole. The significance of this population segment is based on a positive finding for two of the factors described in our DPS policy for determining significance. In our analysis of the significance criterion, ''Evidence that the loss of the population segment would result in a significant gap in the range of the taxon,'' we determined that, as a consequence of breeding site fidelity combined with the 2,500 mi (4,000 km) separation between the Hawaiian Islands and the Japanese Islands, the discrete population of the black-footed albatross in the Hawaiian Islands was reproductively isolated from the remainder of the taxon in Japan. The significance of this reproductive isolation was supported by evidence that unique haplotypes represented in the Hawaiian Islands population are a consequence of a long-term separation from the remainder of the taxon in Japan. Furthermore, the discrete population segment of the Hawaiian Islands represents 95 percent of the current breeding population. Thus, loss of the Hawaiian Islands discrete population segment would represent a loss of a reproductively isolated population representing a significant majority of the rangewide breeding population and would, therefore, result in a significant gap in the range of taxon.

We also found a positive determination for the significance factor, ''Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics,'' based on the results of two analyses that assessed the genetic divergence of the Hawaiian and Japanese islands populations. Together these analyses determined that the Hawaiian Islands discrete population of

the black-footed albatross was genetically divergent from the remainder of the taxon in Japan through unique haplotypes representing almost 50 percent of the genetic diversity of the species. Because we have determined that extirpation of the Hawaiian Islands population segment would result in the loss of unique genetic characteristics within the taxon, we conclude that the Hawaiian Islands population segment differs markedly from other populations of the species in its genetic characteristics.

DPS Conclusion for the Hawaiian Islands Population Segment of the Black-footed Albatross

Our DPS policy directs us to evaluate the significance of a discrete population in the context of its biological and ecological significance to the remainder of the species to which it belongs. Based on an analysis of the best available scientific and commercial data, we conclude that the Hawaiian Islands population segment of the black-footed albatross is discrete due to reproductive isolation as a result of spatial and temporal separation from the remainder of the taxon. Furthermore, we conclude that the Hawaiian Islands discrete population segment of the black-footed albatross is significant because it meets the following criteria to establish significance in the DPS policy: (1) The loss of this breeding population would mean the loss of a large portion of the geographic range and reproductive proportion of the entire breeding range of the taxon, resulting in a significant gap in the range of the species; and (2) this population differs markedly from the rest of the species because there are genetic characteristics present in this population that are not observed in the remainder of the taxon. Therefore, we conclude that the Hawaiian Islands population of the black-footed albatross is both discrete and significant under our DPS policy and is, therefore, a listable entity under the Act.

Discreteness of the Japanese Islands Population Segment of the Black-footed Albatross

The breeding population is markedly separated from other breeding populations as a consequence of either physical, physiological, ecological, or behavioral factors; quantitative measures of genetic or morphological discontinuity may provide evidence of this separation—The Japanese breeding population of black-footed albatross is separated from the remainder of the species in the Hawaiian Islands by the approximately 2,500 mi (4,000 km) of ocean between the Hahajima Island cluster in the Ogasawara Islands in Japan and Kure Atoll in the Northwestern Hawaiian Islands. While this distance is well within the species' maximum estimated dispersal distance, the nesting site fidelity of the female albatross has effectively delimited the breeding range of the two populations. As previously described above (see Species Biology, Life History), female black-footed albatrosses have a high level of affinity to the nest site; over 99 percent of black-footed albatross females breed on the island where they hatched and fledged (natal site) and establish their own nesting site nearby where they return annually (Rice and Kenyon 1962a, pp. 532–533). Furthermore, this behaviorally dictated reproductive isolation is strongly supported by genetic assessments of the population structure among black-footed albatrosses from three islands in the Hawaiian Islands and from the Japanese Islands of Torishima (Walsh and Edwards 2005, p. 292; Eda *et al.* 2008, p.110) and two of the Ogasawara Islands (Eda *et al.* 2008, p. 110). In these combined assessments it was found that the Japanese population is widely divergent from the Hawaiian population, representing three unique haplotypes out of nine known haplotypes, which is an indicator of long reproductive isolation (Eda *et al.* 2008, pp. 112–115; Chambers 2010, pers. comm.). Furthermore, these results are indicative that the species has been undergoing this divergence for several hundred millennia (Eda *et al.* 2008, pp. 114–115). Thus, not only is the Japanese population spatially separated from the remainder of the taxon, it also has been temporally separated as indicated through unique haplotypes.

Discreteness Summary for the Japanese Population of the Black-footed Albatross

Our DPS policy states that a population segment of a vertebrate species may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. We find that the Japanese Islands population segment of the black-footed albatross is reproductively isolated from the remainder of the taxon in the Hawaiian Islands as a result of: (1) The strong behavioral tendencies of black-footed albatross adult females to return to breed near their natal site and to return to an established nesting site in subsequent years; (2) the physical separation of approximately 2,500 miles (4,000 km) of ocean separating the two breeding populations which further enforces the behavioral separation and thus ensures that they breed within a localized geographic area of the Hawaiian Islands; and (3) the genetic uniqueness of the Japanese population, which underscores both the spatial and temporal separation of this population from the remainder of the taxon in the Hawaiian Islands.

We did not examine the second discreteness criterion, ''Delimitation by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant with regard to conservation of the taxon,'' because, although the species is delimited by international governmental boundaries, it was not necessary to further pursue this line of analysis as discreteness of the Japanese breeding population of the black-footed albatross was already determined through a ''marked separation'' of the population from the remainder of the taxon.

Significance of the Japanese Population Segment of the Black-footed Albatross

Having determined that the Japanese population segment of the black-footed albatross meets the discreteness criterion for a DPS, our DPS policy directs us to consider scientific evidence of the biological and ecological importance of this discrete population to the remainder of the taxon to which it belongs. In this case, we evaluate the biological and ecological significance of the Japanese population segment of black-footed albatrosses relative to the taxon as a whole, which includes the breeding population of the taxon in the Hawaiian Islands. A discrete population is considered significant under the DPS policy if it meets one of the four elements identified in the policy under significance, or can otherwise be reasonably justified as being significant. Here we evaluate the four potential factors suggested by our DPS policy in evaluating significance.

(1) Persistence of the Discrete Population Segment in an Ecological Setting That Is Unusual or Unique for the Taxon

In considering whether the population occupies an ecological setting that is unusual or unique for the taxon, we evaluate whether the habitat includes unique features not used by the taxon elsewhere in its range and whether the habitat shares many features common to the habitats of other populations within the range of the taxon.

The island groupings in the western Pacific where the Japanese population of the black-footed albatross breeds can be characterized as volcanic (Torishima

Island and the Ogasawara Islands) (Naughton *et al.* 2007, p. 5) and nonvolcanic (Senkaku Islands) (Naughton *et al.* 2007, p. 5). The Northwestern Hawaiian Islands where the remainder of the taxon breeds is predominantly characterized by reefs and atolls, some having sheer-faced cliffs and others sloping to the ocean (Rice and Kenyon 1962b, pp. 369–377). Most of the best available information describes the nesting characteristics of the taxon in the Hawaiian population; we acknowledge that very little information is available detailing the nesting characteristics in the Japan population. However, based on the best available scientific information, we have determined that the habitat for the Japanese population segment does not represent an ecological setting that is unusual or unique relative to the habitat available throughout the entire taxon's range. Black-footed albatrosses nesting in the Japanese Islands appear to utilize habitat with similar physical structure as black-footed albatrosses in the Hawaiian Islands. In general, nests are a depression in a sandy or volcanic ash substrate, surrounded by a rim of sand or volcanic soil (Rice and Kenyon 1962a, 536–537; Arata *et al.* 2009, p. 10). Although black-footed albatrosses nest on high open slopes on the steep, rocky Japanese Islands where sandy beaches are not available, we have no evidence to suggest that this difference in physical location of nests on high elevation slopes is ecologically significant to the taxon as whole.

Based upon limited information to differentiate the foraging habits of the Japanese population (Kawakami *et al.* 2006, pp. 189–190) from the remainder of the taxon in the Hawaiian Islands (Fernandez *et al.* 2001, p. 4; Awkerman *et al.* 2008, p. 14), it appears that the foraging habits of breeding black-footed albatrosses in Japan are similar to the taxon as a whole. Breeding birds tend to forage close to breeding islands while chicks are young and require continuous feeding and then take longer foraging trips as chicks get older (Kawakami *et al.* 2006, pp. 189–190; Hyrenbach *et al.* 2002, pp. 289–294). During the nonbreeding season, birds from both population localities forage throughout the north Pacific (Hyrenbach *et al.* 2002, p. 298). Given the available information on the diversity and extent of ecological settings of black-footed albatrosses in the remainder of its range in the Hawaiian Islands, we conclude that the discrete population of black-footed albatross in Japan is not ''significant'' within the meaning of the DPS policy as a result of persistence in a unique or unusual ecological setting.

(2) Loss of the Population Segment Would Result in a Significant Gap in the Range of the Taxon

Loss of the black-footed albatross breeding population in the Japanese Islands, when considered in relation to black-footed albatrosses breeding in the Hawaiian Islands, would mean the loss of a proportionally small geographic area that holds approximately 5 percent of the entire breeding population of the taxon. Regardless of the proportional size of such a loss, the Japanese Islands population represents an important segment of the representative historical range of the taxon; loss of the breeding population in the Japanese Islands would mean the loss of the entire western Pacific breeding range of the species. The Japanese Islands population additionally provides an important measure of redundancy for the taxon as a whole. Loss of the Japanese Islands breeding population of black-footed albatross would reduce the remainder of the taxon to a single concentration of nesting islands in the central Pacific. Since only two breeding populations comprise the entire range of the species, each could be critical as a source of potential recolonization should the other population be lost (for example, to a severe epizootic).

Assessments of genetic divergence between the birds from Japan and birds from the Hawaiian Islands provide evidence of three haplotypes out of nine known haplotypes that are unique to the Japanese population and another haplotype that is nearly unique to Japan (Eda *et al.* 2008, pp. 112–114). Such genetic divergence in a species of bird suggests reproductive isolation over several hundred millennia with only rare movements of females between the Japanese and Hawaiian islands (Eda *et al.* 2008, p. 114; Chambers 2010, pers. comm.). Even though the Japanese Islands population does not contain the full genetic representation of the taxon rangewide, it is the only other population of the taxon that wildlife managers could use to repopulate the Hawaiian Islands population should that population be imperiled by a catastrophic event.

In summary, the loss of the Japanese population of black-footed albatross, therefore, would: (1) Reduce the genetic diversity of the remainder of the taxon by almost 45 percent (see (4), below; (2) reduce the breeding range of the taxon geographically to only the Hawaiian Islands, and eliminate the only other population representative of the historical range of the species; and (3) eliminate any biological redundancy that could be imperative to the maintenance of the species in the event of a catastrophe. Therefore, we find that the gap in the range resulting from the loss of the black-footed albatross breeding population in Japan would be significant to the taxon as a whole.

(3) Evidence That the Discrete Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Elsewhere as an Introduced Population Outside Its Historical Range

Because the population in Japan does not represent the only surviving natural occurrence of the black-footed albatross throughout the range of the taxon, we conclude that the discrete population of the black-footed albatross in Japan does not meet the significance criterion of the DPS policy based on this factor.

(4) Evidence That the Discrete Population Segment Differs Markedly from Other Populations of the Species in Its Genetic Characteristics

The genetic structure of the black-footed albatross was assessed in two separate analyses (Walsh and Edwards 2005, pp. 289–295; Eda *et al.* 2008, 109–116). Through these analyses it was determined that the Japanese breeding population is genetically differentiated from the taxon in the Hawaiian Islands (Walsh and Edwards 2005, pp. 291–292; Eda *et al.* 2008, 112–115; Chambers 2010, pers. comm.). Of the nine known haplotypes described, three were found to be unique to the Japanese Islands population (J2, J3, J4), and a fourth (J1) was nearly unique (Eda *et al.* 2008, 112–115). Although these haplotypes occur at low frequencies, they are nonetheless indicators of long isolation between the population in Japan and the remainder of the taxon in the Hawaiian Islands, and the loss of the Japanese population would mean a significant reduction of almost 45 percent of the total genetic diversity of the taxon as a whole (Chambers 2010, pers. comm.). We find, therefore, that the breeding population in Japan differs markedly from the rest of the taxon because there are genetic characteristics present in this population that are not observed in the remainder of the taxon in the Hawaiian Islands.

Significance Summary

We find that the discrete population segment of black-footed albatross that occurs in Japan is significant to the species as a whole. The significance of this population segment is based on a positive finding for two of the factors described in our DPS policy for

determining significance. In our analysis of the significance criterion, ''Evidence that the loss of the population segment would result in a significant gap in the range of the taxon,'' we determined that loss of the Japanese breeding population would result in a significant gap in the range of the taxon because it would: (1) Reduce the genetic diversity of the remainder of the taxon by almost 45 percent; (2) reduce the breeding range of the taxon geographically to only the Hawaiian Islands, and eliminate the only other population representative of the historical range of the species; and (3) eliminate any biological redundancy that could be imperative to the maintenance of the species in the event of a catastrophe. We also made a positive determination for the significance factor ''Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics'' based on the results of two analyses that assessed the genetic divergence of the Japanese and Hawaiian islands populations. Together these analyses determined that the Japanese Islands population of the black-footed albatross was genetically divergent from the remainder of the taxon in the Hawaiian Islands through unique haplotypes representing almost 45 percent of the genetic diversity of the species. We have determined that extirpation of the Japanese Islands population segment would result in the loss of unique genetic characteristics within the taxon; therefore, we conclude that the Japanese Islands population segment differs markedly from other populations of the species in its genetic characteristics.

DPS Conclusion for the Japanese Population Segment of the Black-footed Albatross

Our DPS policy directs us to evaluate the significance of a discrete population in the context of its biological and ecological significance to the remainder of the species to which it belongs. Based on an analysis of the best available scientific and commercial data, we conclude that the Japanese Islands population segment of the black-footed albatross is discrete due to reproductive isolation as a result of spatial and temporal separation from the remainder of the taxon. Furthermore, we conclude that the Japanese Islands discrete population segment of the black-footed albatross is significant because it meets the following criteria established in the DPS policy: (1) The loss of this breeding population would mean the loss of the only other population representative of the historical breeding range of the taxon, nearly half the known genetic diversity of the species, and potentially important biological redundancy for the taxon, resulting in a significant gap in the range of the species; and (2) this population differs markedly from the rest of the species because there are genetic characteristics present in this population that are not observed in the remainder of the taxon. Therefore, we conclude that the Japanese Islands population is both discrete and significant under our DPS policy and is, therefore, a listable entity under the Act.

Summary of DPS Analyses

Based on our DPS policy (61 FR 4722; February 7, 1996), if a population segment of a vertebrate species is both discrete and significant relative to the taxon as a whole (*i.e.,* it is a distinct population segment), its evaluation for endangered or threatened status will be based on the Act's definition of those terms and a review of the factors enumerated in section 4(a) of the Act. Having found that the Hawaiian Islands and Japanese Islands breeding populations of the black-footed albatross each meet the definition of a distinct population segment, we now evaluate the status of each of these populations separately to determine whether either meets the definition of endangered or threatened under the Act.

Summary of Factors Affecting the Hawaiian Islands DPS

The Act establishes five categories of threat that, either singly or in combination, indicate a DPS may be threatened or endangered. The five listing factors that must be considered are: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have already completed a comprehensive status review of the black-footed albatross across the range of the species. In this case, the entire range of the species is composed of two breeding populations, that in the Hawaiian Islands and that in the Japanese Islands. In our rangewide assessment of the status of the black-footed albatross, wherever possible we differentiated between threats acting on the breeding populations in the Hawaiian Islands and threats acting on the breeding populations in the Japanese Islands, and reached separate conclusions as to the significance of those threats for each of these populations. To avoid repetition, here we incorporate by reference the threats analysis specific to the Hawaiian Islands breeding population of the black-footed albatross conducted earlier in this document, and specifically note if any circumstances specific to the breeding population in the Hawaiian Islands differs from the earlier analysis. Otherwise, we present only our conclusion for each of the threat factors considered, and refer the reader to the rangewide status assessment, above, for the detailed analysis supporting each conclusion (see Summary of Factors Affecting the Species Throughout Its Range).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In our rangewide evaluation of threats facing the black-footed albatross, we evaluated the following potential factors as they affect the habitat or range of the Hawaiian Islands breeding population (now DPS) of the black-footed albatross: military activities; volcanic activity; natural gas exploration; invasive plant species; and effects related to climate change, including sea level rise, coastal and wave inundation events, changes in tropical storm frequency or intensity, changes in ENSO and PDO events resulting in reduced marine productivity, and increased ambient temperatures. We have no additional information unique to the Hawaiian Islands DPS of the black-footed albatross. Therefore, based on our assessment of the best scientific and commercial data available, as detailed in our rangewide assessment of Factor A, above (Summary of Factors Affecting the Species Throughout Its Range), we conclude that the Hawaiian Islands DPS of the black-footed albatross is not threatened by the present or threatened destruction, or modification, or curtailment of its habitat or range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information indicating that overutilization of black-footed albatrosses for commercial, scientific, or educational purposes threatens this species, and have no additional information unique to the Hawaiian Islands DPS of the black-footed albatross. Therefore, based on our assessment of the best scientific and commercial data available, as detailed in our rangewide assessment of Factor B, above (Summary of Factors Affecting the Species Throughout Its Range), we conclude that overutilization for

commercial, recreational, scientific, or educational purposes is not a significant threat to Hawaiian Islands DPS of the black-footed albatross.

Factor C. Disease or Predation

Our analysis of the potential threat posed by avian pox, avian cholera, west Nile Virus, and H5N1 is detailed under the section titled *Disease* in our rangewide assessment of Factor C, above. Our analysis of the potential threat posed by predation by rats and sharks is detailed under the section titled *Predation* in our rangewide assessment of Factor C, above. The rangewide assessment specifically addresses the Hawaiian Islands breeding population, and we have no additional information unique to the Hawaiian Islands DPS of the black-footed albatross. Therefore, based on our assessment of the best scientific and commercial data available, as summarized here and detailed in our rangewide assessment of Factor C, above (Summary of Factors Affecting the Species Throughout Its Range), we conclude the Hawaiian Islands DPS of the black-footed albatross is not threatened by disease or predation.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

To determine whether the DPS may be threatened as a result of the inadequacy of existing regulatory mechanisms, we reviewed existing international and U.S. conventions, agreements, and laws for the specific protection of black-footed albatrosses or their marine and terrestrial habitats in the countries where they forage, migrate, and breed. In our comprehensive evaluation of Factor D under the rangewide threats assessment for the black-footed albatross, above (Summary of Factors Affecting the Species Throughout Its Range), we discuss the protection status of the black-footed albatross and its marine and terrestrial habitat at international, national, and regional levels, followed by a discussion of international and national fisheries regulations that are designed to reduce and monitor seabird bycatch from fisheries operations, and specifically evaluate the threat posed to the Hawaiian Island breeding population of the species.

We conclude that the Hawaiian Islands DPS of the black-footed albatross is not significantly threatened by the Hawaii-based shallow-set longline fishery, the Alaska-based demersal longline groundfish fishery, or the California, Oregon, and Washington groundfish, Pacific hake, and pelagic longline fisheries. We cannot definitively determine the extent and quantify the impact of other Alaska-based demersal longline fisheries; other (nonpelagic) longline fisheries based in California, Oregon, and Washington; coastal purse seine and troll fisheries based in the United States; Canadian-based longline fisheries; and longline fisheries based in Japan, Taiwan, China, Korea, Russia, and Mexico. We have no additional information unique to the Hawaiian Islands DPS of the black-footed albatross. Therefore, based on our assessment of the best scientific and commercial data available, as detailed in our rangewide assessment of Factor D, above (Summary of Factors Affecting the Species Throughout Its Range), we conclude that the Hawaiian Islands DPS of the black-footed albatross is not threatened by the inadequacy of existing regulatory mechanisms.

We are mindful of the potential impacts that these fisheries could have on the Hawaiian Islands DPS of the black-footed albatross. Furthermore, we acknowledge that many of the current protective agreements are voluntary in nature, and that bycatch mitigation measures may be lacking in international fleets. Although regulatory mechanisms are thus not as strong or comprehensive as they potentially might be, the present status of the black-footed albatross, with populations collectively stable in the Hawaiian Islands and expected to remain so or even increase into the future (Arata *et al.* 2009, p. 51; ACAP 2010, p. 4), indicates that the DPS is not at risk at a population level as a result of any inadequacy in regulatory mechanisms in place respecting fisheries bycatch.

Factor E. Other Natural or Manmade Factors Affecting its Continued Existence

In our discussion of Factor E under the rangewide threats assessment for the black-footed albatross, above (Summary of Factors Affecting the Species Throughout Its Range), we detail our evaluation of the potential threat to the Hawaiian Islands breeding population posed by several sources of contamination, including organochlorines (*e.g.,* polychlorinated biphenyls (PCBs), dichloro-diphenyl trichloroethane (DDT)), ingestion of plastics, and oil spills. We additionally evaluated the potential threat posed to the black-footed albatross by collisions with airplanes. We have no additional information unique to the Hawaiian Islands DPS of the black-footed albatross. Therefore, based on the best available scientific and commercial data, and as detailed in our rangewide assessment of Factor E, above (see Summary of Threats Affecting the Species Throughout Its Range), we find that other natural or manmade factors do not significantly threaten the black-footed albatross in the Hawaiian Islands DPS. However, we further conclude that continued research and monitoring is important in the detection of potential future effects.

Finding for the Hawaiian Islands DPS

We assessed the best available scientific and commercial data regarding the threats facing the Hawaiian Islands DPS of the black-footed albatross. We reviewed numerous information sources including literature cited in the petition, information in our files, information submitted to us following our 90-day petition finding (72 FR 57278; October 9, 2007) and the second information solicitation period (74 FR 43092; August 26, 2009), and consulted with recognized albatross experts and other Federal, State, and local resource agencies related to potential threats to the black-footed albatross and its marine and terrestrial habitat. Such potential threats include: historical habitat modification; invasive species; effects from climate change including sea level rise, coastal and wave inundation events, changes in tropical storm frequency and intensity, changes in food availability, and increases in ambient temperature; overutilization; disease and predation; bycatch in fisheries; contamination by PCBs and other pollutants; plastic ingestion; oil spills; and collisions with aircraft. To determine whether these risk factors individually or collectively put the DPS in danger of extinction throughout its range, or are likely to do so within the foreseeable future, we first considered whether the factors were causing a population decline, or were likely to do so within the foreseeable future.

We subjected all potential threats to the black-footed albatross to a comprehensive assessment under our rangewide evaluation of the species, above, in the section titled *Summary of Threats Affecting the Species Throughout its Range.* Since the species throughout its range is composed collectively of only two breeding populations, that in the Hawaiian Islands and that in the Japanese Islands, our rangewide assessment included a full evaluation of the threats to each of these two breeding populations as well. To avoid repetition in our assessment of the Hawaiian Islands DPS, we incorporated by reference the detailed threats assessments conducted under the rangewide analysis, above, and present here only our conclusions for

each of those threats specific to the Hawaiian Islands DPS of the black-footed albatross.

On the basis of our status review, we conclude that the listing of the Hawaiian Islands DPS of the black-footed albatross is not warranted at this time. Our standard for determining whether listing is warranted is whether a species (including a DPS) is presently in danger of extinction throughout all or a significant portion of its range (endangered) or is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (threatened). We acknowledge that the black-footed albatross faces a variety of threats, and that some of these threats have had significant impacts on the species in the past. However, our status review indicates that the black-footed albatross population in the Hawaiian Islands is presently stable and under current conditions may even increase in size over the next 60 years (Arata *et al.* 2009, pp. 50–51; ACAP 2010, p. 5), suggesting that these past threats are no longer significantly affecting the species. At this time our evaluation of the best available scientific and commercial data does not suggest that the threats acting on the species, either singly or in combination, are currently of such severity or magnitude as to place the DPS in danger of extinction at the present time or within the foreseeable future.

Summary of Factors Affecting the Japanese Islands DPS

The Act establishes five categories of threat that, either singly or in combination, indicate a DPS may be threatened or endangered. The five listing factors that must be considered are: (A) 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.

We have already completed a comprehensive status review of the black-footed albatross across the range of the species. In this case, the entire range of the species is composed of two breeding populations, that in the Hawaiian Islands and that in the Japanese Islands. In our rangewide assessment of the status of the black-footed albatross, wherever possible we differentiated between threats acting on the breeding population in the Hawaiian Islands and threats acting on the breeding population in the Japanese Islands, and reached separate conclusions as to the significance of those threats for each of these populations. To avoid repetition, here we incorporate by reference the threats analysis specific to the Japanese Islands breeding population of the black-footed albatross conducted earlier in this document, and specifically note if any circumstances specific to the breeding population in the Japanese Islands differ from the earlier analysis. Otherwise, we present only our conclusion for each of the threat factors considered, and refer the reader to the rangewide status assessment, above, for the detailed analysis supporting each conclusion (see *Summary of Factors Affecting the Species Throughout its Range*).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In our rangewide evaluation of threats facing the black-footed albatross, we evaluated the following potential factors as they affect the habitat or range of the Japanese Islands breeding population (now DPS) of the black-footed albatross: military activities; volcanic activity; natural gas exploration; invasive plant species; and the environmental effects of climate change, including sea level rise, coastal and wave inundation events, changes in tropical storm frequency or intensity, changes in ENSO and PDO events resulting in reduced marine productivity, and increased ambient temperatures. Here we evaluate each factor further only if we have additional information unique to the Japanese Islands DPS of the black-footed albatross.

Military Activities

In our rangewide evaluation of threats facing the black-footed albatross, we evaluated military activities as they affect the habitat or range of the Japanese Islands breeding population (now DPS) of the black-footed albatross. We have no additional information unique to the Japanese Islands DPS of the black-footed albatross. Therefore, based on our assessment of the best scientific and commercial data available, as detailed in our rangewide assessment of Factor A, above (*Summary of Factors Affecting the Species Throughout its Range*), we conclude the Japanese Islands DPS of the black-footed albatross is not threatened by military activities.

Volcanic Activity

On Torishima Island, a 1903 volcanic eruption occurred during the nonbreeding season for several species of albatrosses, so that the only apparent effect was to destroy part of their nesting habitats. By 1930, it was apparent that many birds had returned and were breeding on the island as human harvesting of all the albatross species was resumed by settlers. The volcano erupted again in 1939, burying most of the former breeding grounds and making them uninhabitable by the birds. The main crater overflowed once more in 1941, closing the natural anchorage that had allowed free access to human hunters in the past. When visited in 1949, the island was described as ''birdless'' (Austin 1949, p. 289). Black-footed albatrosses reoccupied the island, however, and have been steadily increasing in numbers since systematic counts began in 1957 (Cousins and Cooper 2000, p. 23). Volcanic activity on Torishima Island was last recorded in 2002, with volcanic ash and rock blanketing the central portion of the island.

Given this history, it is likely Torishima Island will continue to experience volcanic activity. We consider it likely that seabirds such as the black-footed albatross will survive such an event, as they have in the past; being pelagic, approximately 75 percent of the population is at sea during any given time, which likely buffers them against such a catastrophic event at their nesting site (Finkelstein *et al.* 2010, p. 328). Additionally, using a matrix model that incorporated catastrophic mortality (*i.e.,* volcanic eruptions) and chronic mortality (*i.e.,* annual fisheries bycatch), chronic mortality was found to have a greater effect on predicted annual population growth rate in short-tailed albatrosses than did catastrophic mortality (Finkelstein *et al.* 2010, p. 328), thus we expect catastrophic mortality would likely have relatively little effect on the population growth of the black-footed albatross population.

Following a volcanic eruption Torishima Island could eventually be reoccupied, and recolonized by birds from the nearby Ogasawara Islands, similar to the observed recolonization of these islands following military activities during World War II. Some authors, however, (Finkelstein *et al.* 2010, p. 323) suggest that this scenario is unlikely as the movement of breeding birds between colonies is extremely low; birds are more likely to skip breeding until such time as they can return to their island; and, dispersing and colonizing birds are more likely to be nonbreeding juveniles. Because Torishima Island provides nesting habitat for approximately 2,150 of the approximately 3,184 nesting pairs in the Japanese Islands (ACAP 2010, p. 4), the

population could be impacted by a volcanic eruption either through mortality of some portion of the nesting population, destruction of nesting habitat for 67 percent of the population in the western Pacific, or through lack of recruitment as a result of several years of skipped breeding.

However, as we anticipate most of the adult birds would be at sea during an eruption, we expect that any negative effects from such an event would not be of such great magnitude that the Japanese Islands DPS would become in danger of extinction throughout all or a significant portion of its range, and based on historical observations, we believe it is reasonable to assume that the breeding population of black-footed albatross on Torishima Island would eventually recover as it has following past eruptions. In addition, it is possible that Torishima Island could eventually be recolonized by birds from the nearby Ogasawara Islands, similar to recolonization of these islands following military activities during World War II. We, therefore, conclude that volcanic activity does not pose a significant threat to the Japanese Islands DPS of the black-footed albatross.

Natural Gas Exploration

In our rangewide evaluation of threats facing the black-footed albatross, we evaluated the potential for natural gas exploration as it may affect the habitat or range of the Japanese Islands breeding population of the black-footed albatross. We have no additional information unique to the Japanese Islands DPS of the black-footed albatross. Therefore, based on our assessment of the best scientific and commercial data available, as detailed in our rangewide assessment of Factor A, above (*Summary of Factors Affecting the Species Throughout its Range*), we have no information at this time to suggest that activities associated with natural gas exploration pose a significant threat to the Japanese Islands DPS of the black-footed albatross.

Effects Related to Climate Change

While climate change impacts to some specific environmental features (*e.g.,* sea ice) can be reliably assessed to some degree into the future, assessment of potential climate-induced changes to black-footed albatross habitat in the tropical and temperate terrestrial and marine systems is complex, with highly variable predictions of effects. Here we evaluate the best available scientific and commercial data on possible climate change effects in these systems that could negatively affect the Japanese Islands DPS of the black-footed albatross now and in the foreseeable future. However, the majority of climate change data that were available to us were not for the far western Pacific, but for the central Pacific. Therefore, much of the information available to us did not apply specifically to the Japanese Islands DPS; however, it constitutes the best scientific and commercial data available to us for our evaluation.

Sea Level Rise and Coastal Inundation

Efforts to project and model the potential effects of climate change and sea level rise on the black-footed albatross have focused primarily on habitat in the central Pacific, not on the western Pacific where the Japanese Islands DPS is located (Vitousek *et al.* 2008, pp 1–11; Fletcher 2009, pp. 1–9; Fletcher and Feirstein 2009, pp. 1–8).

The Japanese Islands supporting nesting populations of black-footed albatross are relatively high islands with some elevation above sea level, not low-lying atolls or reefs as in many of the Northwestern Hawaiian Islands. Therefore, these islands are not likely to be affected by rising sea levels. For example, Torishima is a large island (1,184 ac (479 ha)) with relatively steep topography, with a peak elevation of 1,293 ft (394 m). The Senkaku Islands are also high in elevation, reaching a maximum height of 1,257 ft (383 m) (Japan Meteorological Society, *http://watchizu.gsi.go,* accessed July 21, 2010). Nesting by black-footed albatrosses on these islands occurs well above sea level in volcanic substrates or on the top of hill and upland slopes. These populations of black-footed albatross will not be affected by loss of nesting habitat due to sea level rise (see Summary of Factors Affecting the Species Throughout its Range). Based on this assessment, and as detailed in our rangewide assessment of *Sea Level Rise and Coastal Inundation* under Factor A, above (see *Summary of Factors Affecting the Species Throughout its Range*), we do not believe sea level rise and coastal inundation pose a significant threat to the Japanese Islands DPS.

Climate Change and Wave Inundation

Winter wave heights generated from climate models show significant increases in the northwestern and northeastern Pacific, but in the vicinity of the major black-footed albatross breeding areas in the Japanese Islands (Torishima Island and the Ogasawara Islands), winter wave heights are predicted to remain unchanged (Wang and Swail 2006, p. 116). In addition, as described above, black-footed albatrosses in the Japanese Islands do not nest on beaches, but instead nest upslope on steep high-elevation islands, and would not be impacted by waves or overwash events. Based on this assessment, and as detailed in our rangewide assessment of *Climate Change and Wave Inundation* under Factor A, above (see *Summary of Factors Affecting the Species Throughout its Range*), we do not believe climate change and wave inundation pose a significant threat to the Japanese Islands DPS.

Climate Change and Tropical Cyclone Storm Frequency

As described in our assessment of tropical storm frequency under the rangewide evaluation of Factor A (see *Summary of Factors Affecting the Species Throughout its Range*), above, slight increases (*i.e.,* a few percent), over the next 100–200 years, in both the frequency and intensity of tropical storms are projected in the western Pacific (*e.g.,* Japanese Islands) (Vecchi and Soden 2007, pp. 1068–1069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1371, Figure 14). These projected increases are not expected to significantly affect black-footed albatrosses, which arrive at their nesting sites in mid- to late October and begin laying eggs in mid-November to mid-December. Tropical storm season in the western Pacific ends in early November, and the period of overlap between birds arriving at nesting sites and the end of the tropical storm season is likely only a few weeks. These adult birds can fly away to avoid tropical storms that may arrive after they return to the nesting areas, and although the population of black-footed albatrosses nesting in the Japanese Islands is relatively small, it is unlikely that multiple nesting sites would be impacted in a single storm season, given the geographic spread of the nesting sites on different islands used by the species. Furthermore, as the scale of increase in intensity or frequency of storms is relatively small over the timeframe of 100 to 200 years considered in these models, we anticipate the increase within the next 30 to 50 years to be relatively minimal. Therefore, while there may be some short-term impacts to black-footed albatross nesting success due to the potential overlap of bird arrivals at nesting sites at the end of the tropical storm season, as detailed in our rangewide assessment of *Climate Change and Storm Frequency* under Factor A, above (see *Summary of Factors Affecting the Species Throughout its Range*), we do not

anticipate these impacts to significantly affect the Japanese Islands DPS.

Climate Change and Marine Productivity

We have evaluated the best available scientific and commercial information with regard to climate change and decreased marine productivity in response to climate change, and as detailed in our rangewide assessment of *Climate Change and Marine Productivity* under Factor A, above (see *Summary of Factors Affecting the Species Throughout its Range*), and we have no additional information specific to the Japanese Islands DPS of the black-footed albatross. Based on our assessment, we have no information at this time to suggest that possible predicted decreases in marine productivity pose a significant threat to the Japanese Islands DPS of the black-footed albatross.

Climate Change and Ambient Temperature

As detailed in our rangewide assessment of *Climate Change and Ambient Temperature* under Factor A, above (see *Summary of Factors Affecting the Species Throughout its Range*), our evaluation of the best scientific and commercial data available at this time does not suggest projected average ambient temperature increases pose a significant threat to the breeding population of black-footed albatrosses in the Japanese Islands, and we have no additional information unique to the Japanese Islands DPS. Therefore, based on our assessment, we have no information at this time to suggest that possible predicted increases in ambient temperature pose a significant threat to the Japanese Islands DPS of the black-footed albatross.

Summary of Factor A

Based on our assessment of the best scientific and commercial data available, as summarized here and detailed in our rangewide assessment of Factor A, above (*Summary of Factors Affecting the Species Throughout its Range*), we conclude that the Japanese Islands DPS of the black-footed albatross is not threatened by the present or threatened destruction, or modification, or curtailment of its habitat or range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information indicating that overutilization of black-footed albatrosses for commercial, recreational, scientific, or educational purposes threaten the Japanese Islands DPS. Therefore, we conclude that overutilization for commercial, recreational, scientific, or for educational purposes is not a significant threat to the Japanese Islands DPS of the black-footed albatross.

Factor C. Disease or Predation

Disease

Our analysis of the potential threat posed by avian pox, avian cholera, west Nile Virus, and H5N1 is detailed under the section titled *Disease* in our rangewide assessment of Factor C, above. The principal form of avian pox transmission in wild birds is through the introduced mosquito, *Culex quinquefasciatus,* rather than through direct contact with a contaminated surface or aerosol (Warner 1968, p. 104; Arata *et al.* 2009, p. 20). We are unable to determine the extent and impact of avian pox on the black-footed albatross in the Japanese Islands DPS due to the lack of study and available information. However, based on the limited information available regarding this disease in black-footed albatrosses in the Hawaiian Islands, it is reasonable to assume that the prevalence of this disease in black-footed albatrosses in the Japanese Islands, if present, is low (since it has never been reported from these birds on these islands) and that infected individuals recover from the disease. Therefore, if avian pox is present in black-footed albatrosses in the Japanese Islands, the effect of the pox is expected to be minimal.

Diseases such as West Nile virus, avian cholera, and avian influenza have not been documented in north Pacific albatrosses. West Nile virus is a mosquito-borne disease that has had dramatic effects on birds in North America, though it has not been detected in the central Pacific. A thorough search of the literature indicated that the virulence of West Nile virus to black-footed albatrosses, or albatrosses of any species, has not been tested. As stated above, within the breeding range of black-footed albatrosses, mosquitoes currently are documented only on Midway Atoll and Lehua Island. For transmission to occur, either an infected bird has to reach a breeding island with mosquito populations, or a mosquito carrying the virus has to reach a breeding island. It is highly unlikely, however, that an infected bird or a mosquito from the Hawaiian Islands would travel to the Japanese Islands. We are unable to determine the extent and impact of West Nile virus on the black-footed albatross in the Japanese Islands due to the lack of study and available information, but there are no reports of west Nile virus in the northern Pacific albatrosses.

Avian cholera is a result of an infection by the bacterium *Patruella multocida* and usually occurs in large-scale outbreaks, most commonly in migratory waterfowl at staging areas when populations are concentrated (Botzler 1991, pp. 367–395; USGS 1999, p. 75). Avian cholera has not been detected in birds in the Hawaiian Islands, and reports of die-offs of wild birds in countries other than the United States and Canada are uncommon (USGS 1999, pp. 80–82). However, we are unable to determine the extent and impact of avian cholera on black-footed albatrosses in the Japanese Islands DPS due to the lack of study and available information, but reports of die-offs are not known.

Wild birds have been affected by the H5N1 highly pathogenic avian influenza since 2002 (Uchida *et al.* 2008, p. 1). The H5N1 avian influenza has been detected in wild birds (primarily waterfowl) on the main islands of Japan (Uchida *et al.* 2008, p. 2); however, H5N1 avian influenza has not been detected in wild birds on Torishima Island, the Ogasawara Islands, or the Senkaku Islands.

In summary, we have no evidence to suggest that diseases such as avian pox, west Nile virus, avian cholera, or H5N1 avian influenza pose a significant threat to the Japanese Islands DPS of the black-footed albatross. Therefore, based on our evaluation of the best scientific and commercial data available, we conclude that disease is not a significant threat to the black-footed albatross in the Japanese Islands DPS.

Predation

In the Japanese Islands DPS, rats are documented from Torishima Island and the Ogasawara Islands (Okochi *et al.* 2004, p. 1,466) and could occur on the Senkaku Islands, although recent survey information is not available. The Ogasawara Islands and Torishima Island together are home to approximately 5 percent of the rangewide breeding population and 98 percent of the Japanese Islands population, which has been documented to be increasing despite the presence of rats (Cousins and Cooper 2000, p. 23; Hasegawa 2010, pers. comm.). This suggests that rat predation is not a significant threat to black-footed albatrosses breeding on these islands.

Our analysis of the potential threat posed by shark predation is detailed under the section titled *Predation* in our rangewide assessment of Factor C, above. We have no additional information unique to the Japanese

Islands DPS of the black-footed albatross. Based on our evaluation, at present we have no evidence to suggest that shark predation poses a significant threat to the Japanese Islands DPS of the black-footed albatross.

In summary, based on our assessment of the best scientific and commercial data available, as summarized here and detailed in our rangewide assessment of Factor C, above (*Summary of Factors Affecting the Species Throughout its Range*), we conclude the Japanese Islands DPS of the black-footed albatross is not threatened by disease or predation.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

To determine if the DPS is threatened as a result of the inadequacy of existing regulatory mechanisms, we reviewed existing international and U.S. conventions, agreements, and laws for the specific protection of black-footed albatrosses or their marine and terrestrial habitats in the countries where they forage, migrate, and breed. In our comprehensive evaluation of Factor D under the rangewide threats assessment for the black-footed albatross, above (*Summary of Factors Affecting the Species Throughout its Range*), we discuss the protection status of the black-footed albatross and its marine and terrestrial habitat at international, national, and regional levels, followed by a discussion of international and national fisheries regulations that are designed to reduce and monitor seabird bycatch from fisheries operations, and specifically evaluate the threat posed to the Japanese Islands breeding population of the species.

Based on our review of the best available information, as detailed above under Factor D in the section *Summary of Factors Affecting the Species Throughout its Range,* we conclude that the Japanese Islands DPS of the black-footed albatross is not significantly threatened by the Hawaii-based shallow-set longline fishery, the Alaska-based demersal longline groundfish fishery, or the California, Oregon, and Washington groundfish, Pacific hake, and pelagic longline fisheries at this time or within the foreseeable future. We cannot definitively determine the extent and quantify the impact of other Alaska-based demersal longline fisheries; other (nonpelagic) longline fisheries based in California, Oregon, and Washington; coastal purse seine and troll fisheries based in the United States; Canadian-based longline fisheries; and longline fisheries based in Japan, Taiwan, China, Korea, Russia, and Mexico. We have no additional information unique to the Japanese Islands DPS of the black-footed albatross.

We are mindful of the potential impacts that these fisheries could have on the Japanese Islands DPS of the black-footed albatross. Furthermore, we acknowledge that many of the current protective agreements are voluntary in nature, and that bycatch mitigation measures may be lacking in international fleets. Although existing regulatory mechanisms could be strengthened and broadened in scope, at this time the present status of the black-footed albatross, with populations steadily increasing in the Japanese Islands (Figure 4, this document), indicates that the DPS is not endangered or threatened as a result of any inadequacy in regulatory mechanisms respecting fisheries bycatch.

Summary of Factor D

Based on our assessment of the best scientific and commercial data available, as summarized here and detailed in our rangewide assessment of Factor D, above (*Summary of Factors Affecting the Species Throughout its Range*), we conclude that the Japanese Islands DPS of the black-footed albatross is not threatened by the inadequacy of existing regulatory mechanisms to the extent that it is currently in danger of extinction.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

In our discussion of Factor E under the rangewide threats assessment for the black-footed albatross, above (*Summary of Factors Affecting the Species Throughout its Range*), we detail our evaluation of the potential threat posed by several sources of contamination, including organochlorines (*e.g.,* polychlorinated biphenyls (PCBs), dichloro-diphenyl trichloroethane (DDT)), ingestion of plastics, and oil spills. We additionally evaluated the potential threat posed to the black-footed albatross by collisions with airplanes. Here we present only a brief summary of that evaluation and our conclusions as they pertain to the Japanese Islands DPS of the black-footed albatross, and incorporate by reference the underlying analysis of each of these threats.

Contaminants

As detailed under our evaluation of Factor E in the section *Summary of Factors Affecting the Species Throughout its Range,* above, we found studies indicating that organochlorine and heavy metal contaminants are present in high levels in black-footed albatrosses. In the Japanese Islands, levels of mercury in black-footed albatross eggs from Torishima Island were found to be higher than mercury levels documented for other seabirds and were higher than documented threshold levels for adverse effects in other bird species (Ikemoto *et al.* 2005, p. 892). However, no negative impacts on the birds at Torishima were observed. Lead levels in black-footed albatross chicks on Torishima Island were found to be below levels of lead-poisoned Laysan albatross chicks from Midway Atoll in the central Pacific, and no symptoms of lead poisoning, such as droop-wing syndrome, were observed in black-footed albatrosses (Ikemoto *et al.* 2005, p. 893).

Kunisue *et al.* (2006, entire) studied dioxins and related compounds in black-footed and short-tailed albatrosses from Torishima Island and the Senkaku Islands. They found concentrations of dioxins were greater in black-footed albatrosses than in short-tailed albatrosses, and toxic equivalents of the eggs of both albatross species exceeded the thresholds observed in some other species of wild birds (Kunisue *et al.* 2006, pp. 6920, 6925). Although they note that sensitivity for biochemical effects varies widely between species and the sensitivity of albatross for dioxin-like effects is not known, they also found some evidence of what they characterize as ''potential dioxin-like alterations'' in the black-footed albatross (Kunisue *et al.* 2006, p. 6925). Kunisue *et al.* (2006, p. 6925) suggested that toxic equivalents in black-footed albatross eggs on Torishima exceed the toxicity thresholds for some other avian embryos, but the sensitivity of black-footed albatrosses for dioxin-like toxic effects is not known, and embryo viability was not evaluated in this study.

In the Japanese Islands, populations of the black-footed albatross have been steadily increasing (Figure 4, this document) despite the high levels of lead, mercury, and dioxins and related compounds detected in eggs and chicks there, and no adverse effects have been observed. Therefore, we cannot conclude that these contaminants pose a significant threat to the species in the Japanese Islands, as we have no evidence that they are causing a decrease in the population.

Based on our evaluation of the best available scientific and commercial data, we conclude that organochlorides and heavy metals do not pose a significant threat to the Japanese Islands DPS.

Plastic Ingestion

Our evaluation of the threat posed by plastic ingestion is detailed in our rangewide assessment of Factor E, above (*Summary of Factors Affecting the Species Throughout its Range*). We have no data on plastic ingestion specific to black-footed albatrosses in the Japanese Islands DPS, but we have no reason to assume that the effects in Japan would be any different from those observed in other geographic areas; therefore, we based our evaluation on the best available information. Because we did not find evidence that plastic ingestion by black-footed albatrosses is a significant source of mortality or reduces body condition in the species, we cannot conclude that plastic ingestion is a significant threat to the Japanese Islands DPS of the black-footed albatross.

Oil Pollution

As detailed in our rangewide analysis of the black-footed albatross under Factor E, above (*Summary of Factors Affecting the Species Throughout its Range*), we do not consider oil spills to pose a significant threat to the Japanese Islands DPS, now or within the foreseeable future. We have no information indicating that oil drilling takes place near the breeding grounds of the Japanese Islands DPS of the black-footed albatross. Based on our assessment, we conclude that oil spills do not pose a significant threat to the Japanese Islands DPS of the black-footed albatross.

Collisions with Aircraft

We have no information to suggest that there are any runways or other air traffic close to any of the breeding sites utilized by black-footed albatross in the Japanese Islands DPS. Thus, we conclude that collisions with aircraft are not a significant threat to the Japanese Islands DPS of the black-footed albatross.

Summary of Factor E

We found studies indicating that organochlorine and heavy metal contaminants are present in high levels in black-footed albatrosses, but there is little research investigating the effects of these compounds on black-footed albatrosses. In the Japanese Islands, black-footed albatrosses on Torishima Island and in the Ogasawara Islands have been found to have levels of mercury and other contaminants that exceed the threshold for adverse effects in some other bird species, but the sensitivity level for black-footed albatrosses is not known, and no negative impacts were observed. The population of black-footed albatrosses has been steadily increasing in the Japanese Islands, thus contaminants do not appear to act as a limiting factor on this population. Therefore, we conclude that organochlorines and heavy metal contaminants are not significant threats to the Japanese Islands DPS of the black-footed albatross.

Like other seabirds, black-footed albatrosses ingest plastics while foraging and accidentally feed ingested plastics to their chicks. Investigations on the effects of plastic ingestion in black-footed albatrosses and Laysan albatrosses indicated that ingestion of plastics does not reduce body condition or survivorship in black-footed albatross chicks, nor is there any evidence that it is a direct source of mortality in black-footed albatrosses. Therefore, we conclude that plastic ingestion is not a significant threat to the Japanese Islands DPS of the black-footed albatross.

Potential impacts from contamination from oil spills and future oil development are not likely to be a threat to the species' nesting habitat in the Japanese Islands because we have no information to suggest that oil drilling or development is occurring or is likely to occur in this area. However, black-footed albatrosses forage over vast areas of the ocean and could possibly encounter oil anywhere and, therefore, are vulnerable, both individually and in small foraging groups, but likely not population-wide. Accordingly, we do not consider oil spill contamination to be a significant threat to the Japanese Islands DPS of the black-footed albatross.

As there is no air traffic in the areas used by black-footed albatrosses for nesting in the Japanese Islands DPS and we do not anticipate any in the future, we do not consider collisions with aircraft to pose a significant threat to this DPS.

Based on our assessment of the best scientific and commercial data available, as summarized here and detailed in our rangewide assessment of Factor E, above (*Summary of Factors Affecting the Species Throughout its Range*), we find that other natural or manmade factors do not significantly threaten the black-footed albatross in the Japanese Islands DPS.

Finding for the Japanese Islands DPS

We assessed the best available scientific and commercial information regarding the threats facing the Japanese Islands DPS of the black-footed albatross. We reviewed numerous information sources including literature cited in the petition, information in our files, and information submitted to us following our 90-day petition finding (72 FR 57278; October 9, 2007), and the second information solicitation period (74 FR 43092; August 26, 2009), and we consulted with recognized albatross experts and other Federal, State, and local resource agencies related to potential threats to the black-footed albatross and its marine and terrestrial habitat. Such potential threats include: historical habitat modification; effects from climate change, including sea level rise, changes in tropical storm frequency and intensity, changes in marine productivity, and increases in ambient temperature; overutilization; disease and predation; bycatch in fisheries; contamination by PCBs and other pollutants; plastic ingestion; oil spills; and collisions with aircraft. To determine whether these risk factors individually or collectively put the Japanese Islands DPS in danger of extinction throughout its range, or are likely to do so within the foreseeable future, we first considered whether the factors were causing a population decline, or were likely to do so in the future.

We subjected all potential threats to the black-footed albatross to a comprehensive assessment under our rangewide evaluation of the species, above, in the section titled *Summary of Threats Affecting the Species Throughout its Range.* Since the species throughout its range is composed collectively of only two breeding populations, that in the Hawaiian Islands and that in the Japanese Islands, our rangewide assessment included a full evaluation of the threats to each of these two breeding populations as well. To avoid repetition in our assessment of the Japanese Islands DPS, we incorporate by reference the detailed threats assessments conducted under the rangewide analysis, above, and we present here only our conclusions for each of those threats specific to the Japanese Islands DPS of the black-footed albatross.

On the basis of our status review, and as summarized above under our evaluation of each listing factor, we conclude that the listing of the Japanese Islands DPS of the black-footed albatross is not warranted at this time. Our standard for determining whether listing is warranted is whether a species (including a DPS) is presently in danger of extinction throughout all or a significant portion of its range (endangered) or is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (threatened). We acknowledge that the black-footed albatross faces a variety of

threats, and that some of these threats have had significant impacts on the species in the past. However, our status review indicates that the black-footed albatross population in the Japanese Islands has been steadily increasing over time and shows no sign of a decline (Cousins and Cooper 2000, p. 23; Figure 4, this document). Therefore, at this time our evaluation of the best available scientific and commercial data does not suggest that the threats acting on the species, either singly or in combination, are currently of such severity or magnitude as to place the Japanese Islands DPS in danger of extinction at the present time or within the foreseeable future.

Significant Portion of the Range

Having determined that the black-footed albatross is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range, in the Hawaiian Islands DPS, or in the Japanese Islands DPS, we next consider whether there are any significant portions of the range where the black-footed albatross is in danger of extinction or is likely to become endangered in the foreseeable future.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet a biologically based definition of significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine their status (*i.e.,* whether in fact the species is endangered or threatened in a significant portion of its range). Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address either the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.''

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we considered the status question first to determine if any threats or potential threats acting individually or collectively threaten or endanger the species in a portion of its range. In analyzing the status of the black-footed albatross across its range, the only area we identified where threats may be concentrated is the breeding colony on Laysan Island. Of all of the larger breeding colonies (the 2010 count on Laysan indicated 22,272 breeding pairs of black-footed albatross), only the colony on Laysan currently exhibits a negative population trend, although the specific factors contributing to this observed negative trend have not been identified. We therefore considered whether the threats to the breeding colony on Laysan are such that the species may be in danger of extinction there, now or within the foreseeable future, such that Laysan Island may warrant further consideration as a potential significant portion of the range.

Although projections are that the global population is relatively secure under current conditions, the decline in the breeding colony at Laysan Island is of potential concern. We therefore, considered the likely future condition of the colony on Laysan Island under the presently observed rates of population decrease. The trend on Laysan is reported as decreasing by 1.1 percent a year by ACAP (2010, p. 7), and at an average rate of 1.3 percent a year by Arata *et al.* (2009, p. 41; CI–0.017 to –0.0009). There is some variation around this trend, however; for example, between 2009 and 2010 the number of nesting black-footed albatrosses on Laysan actually increased by over 3,000 pairs, from 19,088 to 22,272 (Flint 2011a, pers. comm.). Using a simple deterministic population model, we determined that, under the worst-case scenario of decline at a rate of 1.7 percent a year (the outer bound of the confidence limits yielded by the models of Arata *et al.* (2009, p. 41), in 50 years, nearly 9,500 breeding pairs of black-footed albatross would remain on Laysan Island, and in 100 years there would still be an estimated 3,850 pairs (USFWS 2011, unpublished data), assuming no changes in other conditions. We recognize that a more sophisticated population model capable of incorporating stochasticity and changes in potential future conditions would be preferable, however, such a model is not available to us at this time. Therefore, we consider this to be the best information available to us for the purposes of the present determination. Furthermore, we acknowledge that such a continued decline is by no means a desired condition for conservation; however, for the purposes of the Act, it does indicate that the population on Laysan Island is not likely to become in danger of extinction within the foreseeable future. In addition, we considered that Laysan Island is one of the breeding colonies that is least vulnerable to the effects of climate change. According to the study of Baker *et al.* 2006 (p. 7), the projected rise in sea levels by the year 2100 will likely result in a loss of only 5 percent of the terrestrial area of Lisianki, which is considered similar in size and elevation to Laysan. Baker *et al.* (2006, p. 7) suggest that Laysan Island may persist largely intact well into the next century, and that seabirds using this island for nesting will likely suffer relatively marginal losses due to sea level rise during this time. As the best available information indicates that the breeding colony of black-footed albatross on Laysan Island is not likely to become in danger of extinction within the foreseeable future, we conclude that Laysan Island does not warrant further consideration as a potential significant portion of the range at this point in time. We did not identify any other potential significant portions of the range of the black-footed albatross that may be threatened or endangered.

In *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136, 1145 (9th Cir. 2001), the court ruled that a species may be endangered in a significant portion of its range ''if there are major geographical areas in which it is no longer viable but once was.'' Where the area in which the species is expected to survive is ''much smaller than its historical range,'' the determination of whether the species warrants listing turns on whether the lost portion of the range would be significant. The best available information indicates that the black-footed albatross was extirpated from four small islands or atolls where it historically nested near the turn of the 20th century (Table 1), that it continues to persist in viable nesting populations

throughout the vast majority of its known historical range, and that the species even appears to be in the process of actively expanding its current nesting range to islands in the eastern Pacific. We conclude that the portion of the range in which the species remains and is expected to persist is comparable to the extent of its historical range and has not been significantly diminished. Therefore, we have determined that the black-footed albatross is not endangered or threatened in a significant portion of its range rangewide, in the Hawaiian Islands DPS, or in the Japanese Islands DPS.

Conclusion of 12-Month Finding

Our review of the information pertaining to the five factors does not support the assertion that there are significant threats acting on the species or its habitat that rise to the level of causing the black-footed albatross to be in danger of extinction or likely to become so in the foreseeable future, throughout all or a significant portion of its range. Although the black-footed albatross faced significant threats in the past, today all indications are that the black-footed albatross population is stable or even slightly increasing rangewide, in the Hawaiian Islands, and in the Japanese Islands, and we have no information indicating this status is likely to change within the foreseeable future. Therefore, listing the black-footed albatross as threatened or endangered under the Act is not warranted at this time.

We request that the public submit any new information concerning the status of, or threats to, the black-footed albatross to our Pacific Islands Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the black-footed albatross and encourage its conservation. If an emergency situation develops for the black-footed albatross, or any other species, we will act to provide immediate protection.

References Cited

A complete list of all references cited herein is available on the Internet at *http://www.regulations.gov* and upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this notice are staff members of the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 23, 2011.

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

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Part III

State Justice Institute

Grant Guideline for FY 2012; Notice

STATE JUSTICE INSTITUTE

Grant Guideline for FY 2012

AGENCY: State Justice Institute.

ACTION: Notice.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2012 State Justice Institute grants, cooperative agreements, and contracts.

DATES: October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 22314, 571–313–8843, *jonathan.mattiello@sji.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.,* as amended, SJI is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

The following Grant Guideline is adopted by the State Justice Institute for FY 2012.

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I. The Mission of the State Justice Institute

SJI was established by State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 *et seq.*) to improve the administration of justice in the state courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, SJI is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of state court systems through national and state organizations.

To accomplish these broad objectives, SJI is authorized to provide funding to state courts, national organizations which support and are supported by state courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the state courts. SJI is supervised by a Board of Directors appointed by the President, with the advice and consent of the Senate. The Board is statutorily composed of six judges; a state court administrator; and four members of the public, no more than two can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, SJI is authorized to perform the following activities:

A. Support technical assistance, demonstrations, special projects, research and training to improve the administration of justice in the state courts;

B. Provide for the preparation, publication, and dissemination of information regarding state judicial systems;

C. Participate in joint projects with federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the state courts;

E. Encourage and assist in furthering judicial education; and

F. Encourage, assist, and serve in a consulting capacity to state and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

SJI is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).*

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of state governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to state and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705(b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. SJI may also make awards to state or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* SJI may enter into inter-agency agreements with federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

III. Scope of the Program

SJI is offering six types of grants in FY 2012: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Partner Grants, Strategic Initiative Grants and the Education Support Program (ESP).

A. Project Grants

Project Grants are intended to support innovative education and training, research and evaluation, demonstration, and technical assistance projects that can improve the administration of justice in state courts locally or nationwide. Project Grants may ordinarily not exceed $300,000. Examples of expenses not covered by Project Grants include the salaries, benefits, or travel of full- or part-time court employees. Grant periods for Project Grants ordinarily may not exceed 36 months.

Applicants for Project Grants will be required to contribute a cash match of

not less than 50 percent of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties. Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the Guideline prior to beginning the application process. If questions arise, applicants are strongly encouraged to consult SJI.

A temporary reduced cash match process is available for state courts submitting Project Grant applications. The use of this cash match reduction authority is intended to help the state courts in this climate of severe budget reductions. The process requires the state court to formally request a reduced cash match, and that the request be certified by the chief justice of that state. The state court must explain in detail how it is facing budgetary cutbacks that will result in significant reductions in other services, and why it will be unable to undertake the project without a cash match reduction. This must be described in detail in the application and verified by the chief justice of that state. Only state courts may apply for a cash match reduction.

Applicants should examine their projected project costs closely, and if they are unable to cover half the costs of the project, they may apply for a reduction in cash match. Applicants are strongly encouraged to provide as much cash match as possible in their application, as some cash match contribution is still required.

Applicants are also encouraged to provide the percentage of budget reductions in their court(s), and the measures that have been taken by the jurisdiction/state to handle the budget shortfalls. This may include staff reductions, as well as reductions in services and programs. Some cash contribution is still required for Project Grants, and should be reflected in the budget proposal for the project. For example, if the total cost of the proposed project is $100,000, the normal cash match would be $50,000. However, if the applicant is unable to provide $50,000 for the activities, but is able to contribute $25,000, the budget should show the request to SJI totaling $75,000, with the cash match of $25,000.

As set forth in Section I., SJI is authorized to fund projects addressing a broad range of program areas. Funding will not be made available for the ordinary, routine operations of court systems.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide state or local courts, or regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed $50,000. Examples of expenses not covered by TA Grants include the salaries, benefits, or travel of full- or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 24 months. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project.

Applicants for TA Grants will be required to contribute a total match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $50,000 TA grant must provide a $25,000 match, of which up to $20,000 can be in-kind and not less than $5,000 must be cash. TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: (1) Enable courts and regional or national court associations to modify and adapt model curricula, course modules, or conference programs to meet states' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT Grants may not exceed $30,000. Examples of expenses not covered by CAT Grants include the salaries, benefits, or travel of full- or part-time court employees. Grant periods for CAT Grants ordinarily may not exceed 12 months.

Applicants for CAT Grants will be required to contribute a match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $30,000 CAT grant must provide a $15,000 match, of which up to $12,000 can be in-kind and not less than $3,000 must be cash. CAT Grant application procedures can be found in section IV.C.

D. Partner Grants

Partner Grants are intended to allow SJI and federal, state, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. SJI and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award. Grant periods for Partner Grants ordinarily may not exceed 36 months.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by SJI must be matched at least dollar-for-dollar. Partner Grants are coordinated by the funding organizations. Partner Grant application procedures can be found in section IV.E.

E. Strategic Initiatives Grants

The Strategic Initiatives Grants (SIG) program provides SJI with the flexibility to address national court issues as they occur, and develop solutions to those problems. This is an innovative approach where SJI uses its expertise and the expertise and knowledge of its grantees to address key issues facing state courts across the United States.

The funding is used for grants or contractual services, and any remaining balance not used for the SIG program will become available for SJI's other grant programs. The program is handled at the discretion of the SJI Board of Directors and staff outside the normal grant application process (*i.e.,* SJI will initiate the project) and there is no cash match requirement.

F. Education Support Program (ESP) for Judges and Court Managers

The new Education Support Program (ESP), formally the Scholarship Program, is intended to enhance the skills, knowledge, and abilities of state court judges and court managers by enabling them to attend out-of-state, or to enroll in online, educational and training programs sponsored by national and state providers that they could not otherwise attend or take online because of limited state, local, and personal budgets. An ESP award only covers the cost of tuition up to a maximum of $1,000 per award. ESP application procedures can be found in section IV.D.

IV. Grant Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of

lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix B for the Project Grant application forms.

1. Forms

a. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from SJI. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a state or local court must include a copy of Form B signed by the state's chief justice or state court administrator. The signature denotes that the proposed project has been approved by the state's highest court or the agency or council it has designated. It denotes further that, if applicable, a cash match reduction has been requested, and that if SJI approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Form (Form C)

Applicants must submit a Form C. In addition, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (see subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities

Applicants other than units of state or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (see section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.,* to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (*e.g.,* provide training for 32 judges and court managers, or review data from 300 cases).

b. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

c. Tasks, Methods and Evaluations

(1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; the type of assistance determined; how suitable providers would be selected and briefed; and how reports would be reviewed.

(2) *Evaluation.* Projects should include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. The evaluation plan should

be appropriate to the type of project proposed.

d. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.,* no later than January 30, April 30, July 30, and October 30), per section VI.A.13.

Applicants should be aware that SJI is unlikely to approve a limited extension of the grant period without strong justification. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

e. Products

The program narrative in the application should contain a description of the product(s) to be developed (*e.g.,* training curricula and materials, Web sites or other electronic multimedia, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be submitted to SJI. The budget should include the cost of producing and disseminating the product to the state chief justice, state court administrator, and other appropriate judges or court personnel. If final products involve electronic formats, the applicant should indicate how the product would be made available to other courts. Discussion of this dissemination process should occur between the grantee and SJI prior to the final selection of the dissemination process to be used.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the state courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the court community and the public at large (*i.e.,* whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VI.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

Applicants proposing to develop Web-based products should provide for sending a notice and description of the document to the appropriate audiences to alert them to the availability of the Web site or electronic product (*i.e.,* a written report with a reference to the Web site).

Three (3) copies of all project products should be submitted to SJI, along with an electronic version in HTML or PDF format. Discussions of final product dissemination should be conducted with SJI prior to the end of the grant period.

(2) *Types of Products.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (see section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use by others and again by the original participants in the course of their duties.

(3) *SJI Review.* Applicants must submit a final draft of all written grant products to SJI for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in Web site or multimedia format, applicants must provide for SJI review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of SJI (see section VI.A.11.f.).

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from SJI and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. in the Grant Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a Web site or other multimedia product, unless SJI approves another placement. The SJI logo can be downloaded from SJI's Web site: *http://www.sji.gov.*

f. Applicant Status

An applicant that is not a state or local court and has not received a grant from SJI within the past three years should indicate whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of state governments, or a national non-profit organization for the education and training of state court judges and support personnel (see section II). If the applicant is a non-judicial unit of federal, state, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

g. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

h. Organizational Capacity

Applicants that have not received a grant from SJI within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from SJI within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it

must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, SJI will require the organization to complete a financial capability questionnaire, which must be signed by a certified public accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

i. Statement of Lobbying Activities

Non-governmental applicants must submit SJI's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts (see Appendix A).

j. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. Letters of general support for a project are also encouraged.

4. Budget Narrative

In addition to Project Grant applications, the following section also applies to Technical Assistance and Curriculum Adaptation and Training grant applications.

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Grant Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. No grant funds or cash match may be used to pay the salary and related costs for a current or new employee of a court or other unit of government because such funds would constitute a supplantation of state or local funds in violation of 42 U.S.C. 10706(d)(1); this includes new employees hired specifically for the project. The salary and any related costs for a current or new employee of a court or other unit of government may only be accepted as in-kind match.

b. Fringe Benefit Computation

For non-governmental entities, the applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.,* the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.I.2.c. Prior written SJI approval is required for any consultant rate in excess of $800 per day; SJI funds may not be used to pay a consultant more than $1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Federal government. The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. In other words, grant funds cannot be used strictly for the purpose of purchasing equipment. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section VII.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VI.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along

with the bases used to calculate these estimates.

k. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. Recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs, *i.e.* salaries plus fringe benefits (see section VII.I.4.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.,* a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section VII.I.4. If the applicant has an indirect cost rate or allocation plan approved by any federal granting agency, a copy of the approved rate agreement must be attached to the application.

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of Form A; Form B, if the application is from a state or local court, or a Disclosure of Lobbying Form (Form E), if the applicant is not a unit of state or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. However, applicants are encouraged to review the grant deadlines available on the SJI Web site. Receipt of each application will be acknowledged by letter or e-mail.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

Applicants for TA Grants may submit an original and three copies of a detailed letter describing the proposed project, as well as a Form A, ''State Justice Institute Application'' (see Appendix B) and Form B, Certificate of State Approval from the State Supreme Court, or its designated agency and Form C, ''Project Budget in Tabular Format.'' Letters from regional court associations must be signed by the president of the association.

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why are state or local resources not sufficient to fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and SJI upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants must follow the same guidelines provided under Section IV.A.4. A completed Form C ''Project Budget, Tabular Format'' and budget narrative must be included with the letter requesting technical assistance.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.*, the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $800 per day must be approved in advance by SJI, and that no consultant will be paid more than $1,100 per day from SJI funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the SJI.

Recipients of TA Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VI.A.3.).

4. Submission Requirements

Letters of application should be submitted according to the grant deadlines provided on the SJI Web site.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Letters of general support for the project are also encouraged. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Institute's Board of Directors, letters sent under separate cover should be received by the same date as the technical assistance request being supported.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter as well as a Form A, ''State Justice Institute Application;'' Form B, ''Certificate of State Approval;'' and Form C, ''Project Budget, Tabular Format'' (see Appendices).

2. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of

application should include the following information.

a. For adaptation of a curriculum:

(1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.,* from a single local jurisdiction, from across the state, from a multi-state region, from across the nation)?

(2) *Need for Funding.* Why are sufficient state or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using state or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? Applicants may demonstrate this by attaching letters of support.

b. For training assistance:

(1) *Need for Funding.* What is the court reform or initiative prompting the need for training? How would the proposed training help the applicant implement planned changes at the court? Why are state or local resources not sufficient to fully support the costs of the required training?

(2) *Project Description.* What tasks would the trainer(s) be expected to perform? Which organization or individual would be hired, if in-house personnel are not the trainers, to provide the training, and how was the trainer selected? If a trainer has not yet been identified, what procedures and criteria would be used to select the trainer? What specific tasks would the trainer and court staff or regional court association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How will the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost.

(3) *Likelihood of Implementation.* What steps have been or will be taken to coordinate the implementation of the new reform, initiative, and the training to support the same? For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the reform and initiate the training proposed, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants must also follow the same guidelines provided under Section IV.A.4. Applicants should attach a copy of budget Form C and a budget narrative (see subsection A.4. above) that describes the basis for the computation of all project-related costs and the source of the match offered.

4. Submission Requirements

For curriculum adaptation requests, applicants should allow at least 90 days between the Board meeting and the date of the proposed program to allow sufficient time for needed planning. Letters of support for the project are also encouraged. Applicants are encouraged to call SJI to discuss concerns about timing of submissions.

D. Partner Grants

SJI and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting state and local courts. SJI may solicit brief proposals from potential grantees to fellow financial partners as a first step. Should SJI be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant. As with Project Grants, Partner Grants will be targeted at initiatives likely to have a significant national impact.

E. Education Support Program (ESP)

1. Limitations

Applicants may not receive more than one ESP award in a two-year period unless the course specifically assumes multi-year participation, or the course is part of a graduate degree program in judicial studies in which the applicant is currently enrolled (neither exception should be taken as a commitment on the part of SJI's Board of Directors to approve serial ESP awards). Attendance at annual or mid-year meetings or conferences of a state or national organization does not qualify as an out-of-state educational program for the ESP, even though it may include workshops or other training sessions.

The ESP only covers the cost of tuition up to a maximum of $1,000 per award. Awards will be made for the exact amount requested for tuition. Funds to pay tuition in excess of $1,000, and other cost of attending the program such as travel, lodging, transportation, meals, materials, transportation to and from airports (including rental cars) must be obtained from other sources or borne by the ESP award recipient. Applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible. An ESP award is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by SJI.

2. Eligibility Requirements

a. *Recipients.* Because of the limited amount of funding available, only full-time judges of state or local trial and appellate courts; full-time professional, state, or local court personnel with management and supervisory responsibilities; and supervisory and management probation personnel in judicial branch probation offices are eligible for the program. Senior judges,

part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible.

b. *Courses.* An ESP award is only for: (1) A course presented in a state other than the one in which the applicant resides or works, or (2) an online course. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers.

Applicants are encouraged not to wait for the decision on an ESP applicaiton to register for an educational program they wish to attend. SJI does not submit the names of ESP award recipients to educational organizations, nor provide the funds to the educational organization. ESP funds are provided as reimbursements directly to the recipient.

3. Forms

a. Education Support Program Application—Form ESP–1 (Appendix B). The application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with state and local court colleagues. The application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted. Please be sure to indicate whether the state will be providing funds for the project and, if so, how much. SJI will not supplant state funds with these awards.

b. Education Support Program Concurrence—Form ESP–2 (Appendix B). Judges and court managers applying for the program must submit the original written concurrence of the chief justice of the state's supreme court (or the chief justice's designee) on Form ESP–2 (see Appendix B). The signature of the presiding judge of the applicant's court may not be substituted for that of the state's chief justice or the chief justice's designee. The chief justice or state court administrator must notify SJI of the designees within the state for ESP purposes.

4. Submission Requirements

Applications may be submitted at any time but will be reviewed on a quarterly basis. This means ESP awards will be on a ''first-come, first-considered'' basis. The dates for applications to be received by SJI for consideration in FY 2011 are November 1, February 1, May 1, and August 1. These are *not* mailing deadlines. The applications must be received by SJI on or before each of these dates. No exceptions or extensions will be granted. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item sent will be used in determining the review date. All applications should be sent by mail or courier (not fax or e-mail).

V. Application Review Procedures

A. Preliminary Inquiries

SJI staff will answer inquiries concerning application procedures.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. SJI will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for state courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and,

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

b. In determining which projects to support, SJI will also consider whether the applicant is a state court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under SJI's enabling legislation (see section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce federal constitutional and legislative requirements; and the level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and,

e. The reasonableness of the proposed budget.

SJI also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to SJI in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

a. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and,

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

b. For training assistance:

(1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget.

SJI will also consider factors such as the reasonableness of the amount requested; compliance with match requirements; diversity of subject matter, geographic diversity; the level of appropriations available in the current

year; and the amount expected to be available in succeeding fiscal years.

4. Partner Grants

The selection criteria for Partner Grants will be driven by the collective priorities of SJI and other organizations and their collective assessments regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like.

5. Education Support Program (ESP)

ESP awards are only for programs that either: (1) Enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel. Awards are provided on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent (''first-come, first-considered'');

b. The unavailability of state or local funds, or funding from another source to cover the costs of attending the program, or participating online;

c. The absence of educational programs in the applicant's state addressing the topic(s) covered by the educational program for which the award is being sought;

d. Geographic balance among the recipients;

e. The balance of ESP awards among educational providers and programs;

f. The balance of ESP awards among the types of courts and court personnel (trial judge, appellate judge, trial court administrator) represented; and

g. The level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project Grant Applications

SJI's Board of Directors will review the applications competitively. SJI staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. Staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of SJI.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

Staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of SJI.

3. Education Support Program (ESP)

A committee of the Board of Directors will review ESP applications quarterly. The Board of Directors has delegated its authority to approve ESP awards to the committee established for the program. The committee will review the applications competitively. In the event of a tie vote, the Chairman of the Board will serve as the tie-breaker. The Chairman of the Board will sign approved awards on behalf of SJI.

4. Partner Grants

SJI's internal process for the review and approval of Partner Grants will depend on negotiations with fellow financiers. SJI may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will be approved by the Board of Directors on whatever schedule makes sense at the time.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that SJI records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

SJI will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except ESP applications), if requested, SJI will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle.

F. Response to Notification of Approval

With the exception of those approved for ESP awards, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to SJI within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final award document will include a Special Condition that will require additional grantee reporting and SJI review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in other situations.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by SJI. The Board of Directors has approved additional policies governing the use of SJI grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by SJI may be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to SJI. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds (see section VIII.A.7.).

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.K. for the requirements of such audits). ESP award recipients, Curriculum Adaptation and Training Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures (see section VIII.K.).

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

5. Conflict of Interest

Personnel and other officials connected with SJI-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which SJI funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of SJI project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of SJI-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and SJI on disposition of such items, SJI shall determine whether protection of the invention or discovery shall be sought. SJI will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by SJI shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by federal, state or local agencies, or to influence the passage or defeat of any legislation by federal, state or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than ESP award recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. In-kind match consists of contributions of time and/or services of current staff members, new employees, space, supplies, *etc.,* made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project or that portion of the grantee's federally-approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75 percent of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of SJI, match may be incurred from the date of the Board of Directors' approval of an award. The amount and nature of required match depends on the type of grant (see section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, SJI may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.E.1.). Match should be expended at the same rate as SJI funding.

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. The match requirement may be waived in exceptionally rare circumstances upon the request of the chief justice of the highest court in the state or the highest ranking official in the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section V.B.1.b.).

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds. Recipients of SJI funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available SJI funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify SJI or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of SJI funds must acknowledge prominently on all products developed with grant funds that support was received from the SJI. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a multimedia product, unless another placement is approved in writing by SJI. This includes final products printed or otherwise reproduced during the grant period, as well as re-printings or reproductions of those materials

following the end of the grant period. A camera-ready logo sheet is available on SJI's Web site: *http://www.sji.gov/forms*.

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, *etc.*] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), *etc.*] and do not necessarily represent the official position or policies of the State Justice Institute.''

b. Charges for Grant-Related Products/ Recovery of Costs

(1) SJI's mission is to support improvements in the quality of justice and foster innovative, efficient solutions to common issues faced by all courts. SJI has recognized and established procedures for supporting research and development of grant products (*e.g.* a report, curriculum, video, software, database, or Web site) through competitive grant awards based on merit review of proposed projects. To ensure that all grants benefit the entire court community, projects SJI considers worthy of support (in whole or in part), are required to be disseminated widely and available for public consumption. This includes open-source software and interfaces. Costs for development, production, and dissemination are allowable as direct costs to SJI.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of SJI of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either SJI grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of SJI-funded project or other purposes consistent with the State Justice Institute Act that have been approved by SJI (see section VII.G.).

c. Copyrights

Except as otherwise provided in the terms and conditions of a SJI award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Due Date

All products and, for TA and CAT grants, consultant and/or trainer reports (see section VI.B.1 & 2) are to be completed and distributed (see below) not later than the end of the award period, not the 90-day close out period. The latter is only intended for grantee final reporting and to liquidate obligations (see section VII.L.).

e. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Three (3) copies of each final product developed with grant funds to SJI, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required; and

(2) An electronic version of the product in HTML or PDF format to SJI.

f. SJI Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of SJI. Grantees shall submit a final draft of each written product to SJI for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit SJI review and incorporation of any appropriate changes required by SJI. Grantees must provide for timely reviews by the SJI of Web site or other multimedia products at the treatment, script, rough cut, and final stages of development or their equivalents.

g. Original Material

All products prepared as the result of SJI-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by SJI may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of SJI funds other than ESP awards must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under a SJI grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained.

Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council. The supreme court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)). See section VII.C.2.

16. Supplantation and Construction

To ensure that SJI funds are used to supplement and improve the operation of state courts, rather than to support basic court services, SJI funds shall not be used for the following purposes:

a. To supplant state or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, SJI may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with SJI funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by SJI that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. (except the requirements pertaining to audits in subsection A.3. above and product dissemination and approval in subsection A.11.e. and f. above) and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to SJI one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Education Support Program (ESP) Recipients

1. ESP award recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the state.

Recipients also must submit to SJI a certificate of attendance from the program and a copy of the notice of any funding received from other sources. A state or local jurisdiction may impose additional requirements on ESP award recipients.

2. To receive the funds authorized by an ESP award, recipients must submit an ESP Payment Request (Form ESP–3) together with a tuition statement from the program sponsor.

ESP Payment Requests must be submitted within 90 days after the end of the course, which the recipient attended.

3. ESP recipients are encouraged to check with their tax advisors to determine whether an award constitutes taxable income under federal and state law.

D. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply, unless specific arrangements are determined by the Partners.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, sub-grantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of SJI for the financial management and disposition of funds;

3. Generating financial data to be used in planning, managing, and controlling projects; and

4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Grant Guideline, the following circulars are applicable to SJI grants and cooperative agreements under the same terms and conditions that apply to federal grantees. The circulars supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied (circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb*).

1. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

2. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

3. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

4. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

5. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

6. *Office of Management and Budget (OMB) Circular A–133,* Audits of States, Local Governments and Non-profit Organizations.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from SJI are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of the State Supreme Court

a. Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council.

b. The state supreme court or its designee shall receive all SJI funds awarded to such courts; be responsible for assuring proper administration of SJI funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The state supreme court or its designee should be familiar with, and periodically monitor, its sub-grantee's financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The sub-grantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the state supreme court or its designee in summary form. Sub-grantee expenditures should be recorded on the books of the state supreme court OR evidenced by report forms duly filed by the sub-grantee. Matching contributions provided by sub-grantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The state supreme court or its designee should ensure that each sub-grantee prepares an adequate budget as the basis for its award commitment. The state supreme court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The state supreme court or its designee will ensure that sub-grantees comply with the match requirements specified in this Grant Guideline (see section VI.A.8.).

(5) *Audit Requirement.* The state supreme court or its designee is required to ensure that sub-grantees meet the necessary audit requirements set forth by SJI (see sections K. below and VI.A.3.).

(6) *Reporting Irregularities.* The state supreme court, its designees, and its sub-grantees are responsible for promptly reporting to SJI the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its sub-grantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by SJI must be structured and executed on a ''Total Project Cost'' basis. That is, total project costs, including SJI funds, state and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions should be applied at the same time of the obligation of SJI funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of SJI, contributions made following approval of the grant by the Board of Directors, but before the beginning of the grant, may be counted as match. If a proposed cash or in-kind match is not fully met, SJI may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does SJI funds and required matching shares. For all grants made to state and local courts, the state supreme court has primary responsibility for grantee/sub-grantee compliance with the requirements of this section (see subsection C.2. above).

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, sub-grants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State supreme courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and sub-grant awards, applications, and required grantee/sub-grantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, sub-grant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and sub-grantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and sub-grantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/sub-grantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and sub-grantees must give any authorized representative of SJI access to and the right to examine all records, books, papers, and documents related to a SJI grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to SJI (see subsection H.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A state and any agency or instrumentality of a state, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to sub-grantees through a state, the sub-grantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/sub-grantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval from SJI. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval from SJI. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to SJI in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all SJI grant funds and grantees.

a. *Request for Reimbursement of Funds.* Grantees will receive funds on a U.S. Treasury ''check-issued'' or electronic funds transfer (EFT) basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by SJI, payment will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Reimbursement Form R), along with the instructions for its preparation, and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT) are available on the Institute's Web site: *http://www.sji.gov/forms.php*.

b. *Termination Reimbursement Funding.* When a grantee organization receiving cash advances from SJI:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or is unable to adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of sub-grants or contracts; or

(3) Is unable to submit reliable and/or timely reports; SJI may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by U.S. Treasury check or EFT to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, SJI may suspend reimbursement payments until the deficiencies are corrected. In extreme cases, grants may be terminated.

c. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/sub-grantees submit timely reports for review.

b. *Due Dates and Contents.* A Financial Status Report is required from all grantees, other than ESP award recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to

SJI funds, state and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, are provided on the SJI Web site. If a grantee requests substantial payments for a project prior to the completion of a given quarter, SJI may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in *OMB Circulars A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; *A–87,* Cost Principles for State and Local Governments; and *A–122,* Cost Principles for Non-profit Organizations.

No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval from SJI is required when the rate of compensation to be paid a consultant exceeds $800 a day. SJI funds may not be used to pay a consultant more than $1,100 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the federal government. SJI funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting, or conference of that organization.

4. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although SJI's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (salaries plus fringe benefits).

a. Approved Plan Available.

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to SJI.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.,* accounting services, legal services, building occupancy and maintenance, *etc.,* as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to SJI within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to SJI within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For state and local governments, SJI has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all SJI grantees and sub-grantees except as provided in section VI.A.18. All grantees/sub-grantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a state or local court receiving a sub-grant from the state supreme court. The audit may be of the entire grantee or sub-grantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–133,* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a state or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a federal agency and satisfy audit requirements of the cognizant federal agency must submit two copies of the audit report prepared for that federal agency to SJI in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to SJI on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, SJI will not make a subsequent grant award to an applicant that has an unresolved audit report involving SJI awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active SJI grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see subsection L.2. below), the following documents must be submitted to SJI by grantees (other than ESP award recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by SJI. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no instance should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than an ESP award.

2. Extension of Close-out Period

Upon the written request of the grantee, SJI may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Grant Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of SJI:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.I.2.d.).
2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).
3. A change in the project site.
4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see subsection E. below).
5. Satisfaction of special conditions, if required.
6. A change in or temporary absence of the project director (see subsections F. and G. below).
7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VI.A.2.).
8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.
9. A change in the name of the grantee organization.
10. A transfer or contracting out of grant-supported activities (see subsection H. below).
11. A transfer of the grant to another recipient.
12. Pre-agreement costs (see section VII.I.2.a.).
13. The purchase of automated data processing equipment and software (see section VII.I.2.b.).
14. Consultant rates (see section VII.I.2.c.).
15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify SJI, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help SJI's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the SJI Executive Director. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by SJI. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification to SJI.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section VII.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/sub-grantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by SJI.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, SJI must be notified immediately. In such cases, if the grantee/sub-grantee wishes to terminate the project, SJI will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to SJI for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by SJI. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of SJI at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to SJI.

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Jonathan D. Mattiello, Executive Director (ex officio).

Jonathan D. Mattiello,

Executive Director.

BILLING CODE P

APPENDIX A

STATE JUSTICE INSTITUTE APPLICATION

1. APPLICANT
a. Organization Name _____
b. Street/P.O. Box _____
c. City _____
d. State _____ e. Zip Code _____
f. Phone Number _____
g. Fax Number _____
h. Web Site Address _____
i. Name & Phone Number of Contact Person
_____
j. Title _____
k. E-Mail Address _____

2. TYPE OF APPLICANT (Check appropriate box)
□ State Court
□ National organization operating in conjunction with State court
□ National State court support organization
□ College or university
□ Other non-profit organization or agency
□ Individual
□ Corporation or partnership
□ Other unit of government
□ Other _____
(Specify) _____

3. PROPOSED START DATE _____

4. PROJECT DURATION (months) _____

5. APPLICANT FINANCIAL CONTACT
a. Organization Name _____
b. Street/P.O. Box _____
c. City _____
d. State _____ e. Zip Code _____
f. Phone Number _____
g. Fax Number _____
h. Web Site Address _____
i. Name & Phone Number of Contact Person
_____
j. Title _____
k. E-Mail Address _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Requested _____
Disposition (if any) or Current Status _____
_____

7. a. AMOUNT REQUESTED FROM SJI $ _____
b. AMOUNT OF MATCH
Cash match $_____
Non-cash Match $_____
c. TOTAL MATCH $_____
d. OTHER CASH $_____
e. TOTAL PROJECT COST $_____

8. TITLE OF PROPOSED PROJECT

9. CONGRESSIONAL DISTRICT OF: _____ _____
Name of Representative; District Number — Project location (if different from applicant location): Name of Representative; District Number

10. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on the behalf of the applicant.

_____ _____ _____
SIGNATURE OF RESPONSIBLE OFFICIAL — TITLE — DATE
(For applications from State and local courts, Form B - Certificate of State Approval, must be attached)

Form A 08/07

BILLING CODE C

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR APPLICATION FORM A

1. Legal **name of applicant** (court, entity or individual); **name of the organizational unit,** if any, that will conduct the project; complete **address** of the applicant, including phone and fax numbers and website addresses; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. Type of Applicant:

a. **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by, or report for, administrative purposes to the chief or presiding justice or judge, or his or her designee.

b. **National organizations operating in conjunction with a state court** include national non-profit organizations controlled by, operating in conjunction with, and serving state courts.

c. **National state court support organization** include national non-profit organizations with primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of state government.

d. **College or university** includes all institutions of higher education.

e. **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

f. **Individual** means a person not applying in conjunction with or on

behalf of an entity identified in one of the other categories.

g. **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

h. **Other unit of government** includes any governmental agency, office, or organization that is not a state or local court.

3. The **proposed start date** of the project should be the earliest feasible date on which applicant will be able to begin project activities following the date of award (example: 08/01/2012).

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. The **applicant financial contact** is the court or organization employee that will administer and account for any funding awarded.

6. If this application, or an application requesting support for the same project or a similar project, has been previously submitted to another funding source (federal or private), enter the name of the **source**, the **date** of submission, the **amount** of funding sought, and the **disposition** (if any) or current status.

7. Requested funding:

a. Insert the **amount requested** from the State Justice Institute to conduct the project.

b. The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of state or local government, or private sources. See 42 U.S.C. 10705(d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government, or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government or private sources to support the project.

c. **Total match** refers to the sum of the cash and in-kind contributions to the project.

d. **Other cash** refers to other funds that may not serve as a match but can be used for a project.

e. **Total project cost** represents the sum of the amount requested from SJI and all other contributions to the project.

8. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

9. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representative(s) from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the state, the country, or from a particular region), enter *statewide*, *national*, or *regional*, as appropriate, in the space provided.

10. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed. For applications from state and local courts, Form B, Certificate of State Approval, must be attached.

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____

Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

_____

prepared by _____

Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by SJI pursuant to the application;

[ ] herby requests consideration of a reduction in cash match as requested by the applicant **(NOTE: only applicable to Project Grant applications)**;

[ ] designates _____

Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by SJI pursuant to the application.

_____

Signature

_____

Date

_____

Name

_____

Title

Form B 09/09

INSTRUCTIONS

The *State Justice Institute Act* requires that:

Each application for funding by a state or local court shall be approved, consistent with state law, by the state's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by SJI to such courts (42 U.S.C. 10705(b)(4)).

FORM B should be signed by the chief judge or chief justice of the state supreme court, or by the director of the designated agency or chair of the designated council.

The term ''state supreme court'' refers to the court of last resort of a state. ''Designated agency or council'' refers to the office or judicial body which is authorized under state law, or by delegation from the state supreme court, to approve applications for grant funding and to receive, administer, and be accountable for that funding.

Form B 09/09

BILLING CODE P

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant:
Project Title:
For Project Activity from/to:
Total Amount Requested for Project from SJI:

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND FUNDS	TOTAL
Direct Costs							
Personnel							$ -
Fringe Benefits							$ -
Consultant / Contractual							$ -
Travel							$ -
Equipment							$ -
Supplies							$ -
Telephone							$ -
Postage							$ -
Printing / Photocopying							$ -
Audit							$ -
Other (specify)							$ -
Subtotal, Direct Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Subtotal, Indirect Costs							$ -
Grand Total	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Remarks:

Form C 09/07

BILLING CODE C

Application Budget Instructions

If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond 12 months. However, a grand total project budget must also be included for multi-year projects. In addition to Form C, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category. If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75 percent of personnel and fringe benefit costs. If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

STATE JUSTICE INSTITUTE ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the grant, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of SJI as they relate to the acceptance and use of SJI funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by SJI will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by federal, state or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any federal, state or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

a. It will not contribute or make available SJI funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

b. No officer or employee of the applicant will intentionally identify SJI or applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the SJI.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by SJI will

be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by SJI will be used to supplant state or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give SJI, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708(b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of SJI. The recipient will submit a final draft of each such product to SJI for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project: ''This [document, website, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

13. The ''SJI'' logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by SJI.

14. Except as otherwise provided in the terms and conditions of a SJI award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of the project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information required.

16. At the conclusion of the project, title to all expendable and non-expendable personal property purchased with SJI funds shall vest in the court, organization, or individual that purchased the property if certification is made to SJI that the property will continue to be used for the authorized purposes of a SJI-funded project or other purposes consistent with the State Justice Institute Act, as approved by SJI. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant, and to obligate the applicant to comply with the assurances enumerated above.

Form D 10/08

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by SJI to directly or indirectly influence the passage or defeat of any legislation by federal, state of local legislative bodies (42 U.S.C. 10706(a)). It also is the policy of SJI to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706(a), SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to SJI to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered **YES** above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year

Subject	Year

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

Signature

Name

Title

Date

Form E 10/07

BILLING CODE P

APPENDIX B

Education Support Program (ESP)

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M.I.)
2. Position: _____
3. Name of Court: _____
4. Address: _____
(Street/P.O. Box)
_____
(City) (State) (Zip Code)
5. Telephone No.: _____ 6. Email Address: _____

PROGRAM INFORMATION:

7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

TUITION COSTS:

Please note: Awards are limited to tuition only, up to a maximum of $1,000 per award.

Tution: $ _____

If I receive an award, I will share the skills and knowledge I have gained with my court colleagues locally and, if possible,

_____ Signature _____ Date

Please return this form and form ESP-2 to:
Education Support Program Coordinator
State justice Institute
11951 Freedom Drive
Suite 1020
Reston, VA 20190

ESP-1 09/11

Education Support Program (ESP)

Concurrence

I, _____,

Name of Chief Justice of the State Supreme Court (or Chief Justice's Designee)

have reviewed the ESP application to attend the program entitled: _____

_____,

prepared by _____,
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the state. The applicant's absence to attend the program would not present an undue hardship to the court.

Check box that applies:

❑ 1. Public funds are not available to enable the applicant to attend this course, and receipt of an award would not diminish the amount of funds made available by the state for judicial branch education.

❑ 2. Public funds are available to support the applicant, but are insufficient to cover total costs. Therefore funding from the State Justice Institute is requested.

_____
Signature

_____
Name

_____
Title

_____
Date

Form ESP-2 (09/11)

[FR Doc. 2011–25893 Filed 10–6–11; 8:45 am]
BILLING CODE C

FEDERAL REGISTER

Vol. 76 Friday,

No. 195 October 7, 2011

Part IV

Department of Housing and Urban Development

Delegation of Authority for the Office of Congressional and Intergovernmental Relations; Order of Succession for the Office of Congressional and Intergovernmental Relations; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5515–D–01]

Delegation of Authority for the Office of Congressional and Intergovernmental Relations

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary of HUD delegates authority to the Assistant Secretary of Congressional and Intergovernmental Relations and supersedes any prior delegation of authority from the Secretary to the Assistant Secretary for Congressional and Intergovernmental Relations.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Aida N. Rodriguez, Office of Congressional and Intergovernmental Relations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10120, Washington, DC 20410–6000, telephone number 202–708–0005. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Section A. Authority Delegated

The Secretary hereby delegates to the Assistant Secretary for Congressional and Intergovernmental Relations authority and responsibility for coordinating congressional and intergovernmental relations activities. In carrying out these responsibilities, the Assistant Secretary for Congressional and Intergovernmental Relations shall, among other duties:

1. Direct and coordinate all matters, except for appropriations matters (which will be conducted by the Office of the Chief Financial Officer in coordination with the Office of Congressional and Intergovernmental Relations), regarding HUD's relationships with the Congress, congressional committees, and individual members of Congress;

2. Maintain liaison with Congress, the White House, and the Office of Management and Budget on legislative matters of concern to HUD;

3. Provide advice to HUD principals and other HUD officials on views on legislation of interest to HUD and recommend strategies on developing or pursuing legislation of interest to HUD;

4. Coordinate and ensure HUD's responsiveness to congressional inquiries and requests for information, reports, or other assistance, such as technical drafting services; and

5. Coordinate all matters involving intergovernmental relations, including state and local government relations.

Section B. Authority Excepted

The authority delegated in this document does not include the authority to sue or be sued.

Section C. Authority To Redelegate

The Assistant Secretary for Congressional and Intergovernmental Relations is authorized to redelegate to employees of HUD any of the authority delegated under Section A.

Section D. Authority Superseded

This delegation supersedes all previous delegations of authority from the Secretary to the Assistant Secretary for Congressional and Intergovernmental Relations.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 30, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–26053 Filed 10–6–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5516–D–01]

Order of Succession for the Office of Congressional and Intergovernmental Relations

AGENCY: Office of the Assistant Secretary for Congressional and Intergovernmental Relations, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Congressional and Intergovernmental Relations designates the Order of Succession for the Office of the Assistant Secretary for Congressional and Intergovernmental Relations. This Order of Succession supersedes all prior Orders of Succession for the Office of Congressional and Intergovernmental Relations.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Aida N. Rodriguez, Office of Congressional and Intergovernmental Relations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10120, Washington, DC 20410–6000, telephone number 202–708–0005. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Congressional and Intergovernmental Relations is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior Orders of Succession for the Office of Congressional and Intergovernmental Relations.

Accordingly, the Assistant Secretary for Congressional and Intergovernmental Relations designates the following Order of Succession:

Section A. Order of Succession

Subject to the provision of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Congressional and Intergovernmental Relations is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Congressional and Intergovernmental Relations, the following officials within the Office of Congressional and Intergovernmental Relations are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary;

(2) Deputy Assistant Secretary for Congressional and Intergovernmental Relations;

(3) Deputy Assistant Secretary for Intergovernmental Relations.

These officials shall perform the functions and duties of the office, including the authority to waive regulations, in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes any prior Orders of Succession for the Office of Congressional and Intergovernmental Relations.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 30, 2011.

Peter A. Kovar,

Assistant Secretary for Congressional and Intergovernmental Relations.

[FR Doc. 2011–26054 Filed 10–6–11; 8:45 am]

BILLING CODE 4210–67–P

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Federal Register

Vol. 76, No. 195

Friday, October 7, 2011

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