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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0101]

RIN 0579–AD39

Importation of French Beans and Runner Beans From the Republic of Kenya Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of French beans and runner beans from the Republic of Kenya into the United States. As a condition of entry, both commodities will have to be produced in accordance with a systems approach that would include requirements for packing, washing, and processing. Both commodities will also be required to be accompanied by a phytosanitary certificate attesting that all phytosanitary requirements have been met and that the consignment was inspected and found free of quarantine pests. This action will allow for the importation of French beans and runner beans from the Republic of Kenya into the United States while continuing to provide protection against the introduction of plant pests.

DATES: *Effective Date:* December 5, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 734–4394.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–53, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

On March 25, 2011, we published in the **Federal Register** (76 FR 16700–16703, Docket No. APHIS–2010–0101) a proposal [1] to amend the regulations by allowing French beans and runner beans from the Republic of Kenya to be imported into the United States if they are cut, shredded, or split and inspected for quarantine pests, and if certain other requirements are met.

We solicited comments concerning our proposal for 60 days ending May 24, 2011. We received two comments by that date. They were from a State department of agriculture and a member of the general public.

One commenter stated opposition to the importation of French and runner beans from Kenya without raising any issues related to the pest risk analysis or proposed rule.

The other commenter recommended that shipments of French and runner beans from Kenya not be permitted entry into the commenter's State until the shipping protocol has had sufficient time to demonstrate the effectiveness of the proposed mitigation measures.

The pest risk analysis we prepared for this action, which includes a qualitative, pathway-initiated pest risk assessment and a risk management document, not only identifies 10 quarantine pests that could potentially accompany shipments of fresh French and runner beans from Kenya, but also identifies mitigation measures that must be completed before these commodities can be safely imported into the United States. The cutting or shredding and splitting of the bean described in the proposed rule will expose and allow detection of internal feeders, thereby mitigating the risk of the quarantine pests being introduced into the United States via the importation of this commodity. As we receive imports from the program, we will continue to evaluate the effectiveness of the program.

[1] To view the proposed rule, the pest risk analysis, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0101.*

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Kenya produced an average of about 37,000 metric tons (MT) of French beans per year between 2004 and 2009, of which it exported an average of about 34,000 MT, primarily to the European Union (EU). The EU provides a well-established market, and it is unlikely that there would be a large diversion of French bean exports by Kenya from this market to the United States.

To examine potential effects of the rule for U.S. small entities, we model three levels of French bean exports to the United States from Kenya, of increasing magnitude: The amount that Kenya expects to export to the United States (800 MT), and amounts equal to 5 percent and 10 percent of Kenya's average annual exports worldwide, 2004–2009 (1,750 MT and 3,500 MT). The largest assumed level is equivalent to 1.3 percent of average annual consumption by the United States during this same period.

Yearly French bean imports from Kenya of 3,500 MT are estimated to result in a price decline of $12.35 per MT, or less than 1 cent per pound in the wholesale price of green beans, and a fall in U.S. production of 1,838 MT. Consumption is estimated to increase by 1,660 MT. Producer welfare could decline by $2.84 million and consumer welfare could increase by $3.25 million, yielding an annual net welfare gain of about $410,000.

While most U.S. green bean producers are small entities, the annual decrease in producer welfare per small entity for the 3,500 MT import scenario is

estimated to be only about $64, or about 0.7 percent of average annual sales by small entities. The dollar decrease in welfare for most small fresh bean producers would be even smaller, given that the majority planted less than an acre in green beans in 2007, while the average area planted in green beans by small-entity producers was 2.4 acres. Also, effects are likely to be smaller than indicated, to the extent that fresh French bean imports from Kenya would displace fresh bean imports from other countries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows French beans and runner beans to be imported into the United States from the Republic of Kenya. State and local laws and regulations regarding French beans and runner beans imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0373.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–54 is added to read as follows:

§ 319.56–54 French beans and runner beans from Kenya.

French beans (*Phaseolus vulgaris* L.) and runner beans (*Phaseolus coccineus* L.) may be imported into the United States from Kenya only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Bactrocera cucurbitae, Chrysodeixis chalcites, Dacus ciliatus, Helicoverpa armigera, Lampides boeticus, Liriomyza huidobrensis, Maconellicoccus hirsutus, Maruca vitrata, Spodoptera littoralis,* and *Thaumatotibia leucotreta.*

(a) *Packinghouse requirements.* The beans must be packed in packing facilities that are approved and registered with Kenya's national plant protection organization (NPPO). Each shipping box must be marked with the identity of the packing facility.

(b) *Post-harvest processing.* The beans must be washed in potable water. Each bean pod must be either cut into chevrons or pieces that do not exceed 2 centimeters in length, or shredded or split the length of the bean pod. Split or shredded bean pod pieces may not exceed 8 centimeters in length and 8.5 millimeters in diameter.

(c) *Commercial consignments.* French beans and runner beans must be imported as commercial consignments only.

(d) *Phytosanitary certificate.* Each consignment of French beans or runner beans must be accompanied by a phytosanitary certificate issued by Kenya's NPPO attesting that the conditions of this section have been met and that the consignment has been inspected and found free of the pests listed in this section.

(Approved by the Office of Management and Budget under control number 0579–0373)

Done in Washington, DC, this 28th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–28509 Filed 11–2–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2007–0048]

RIN 0583–AC83

Classes of Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the definitions and standards for the official U.S. classes of poultry so that they more accurately and clearly describe the characteristics of poultry in the market today. Poultry classes are defined primarily in terms of the age and sex of the bird. Genetic improvements and poultry management techniques have reduced the grow-out period for some poultry classes, while extensive cross breeding has produced poultry with higher meat yields but blurred breed distinctions. FSIS is taking this action to ensure that the labeling of poultry products is truthful and not misleading.

DATES: *Effective Date:* This rule is effective on January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture (USDA), Washington, DC 20250–3700, Telephone (301) 504–0879, Fax (301) 504–0872.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2003, FSIS proposed to amend the definitions and standards for the official U.S. classes of poultry (68 FR 55902). Before publishing the 2003 proposed rule, the Agency had reviewed the poultry class definitions with USDA's Agricultural Marketing Service (AMS) Poultry Programs, and both agencies discussed the issue with members of the poultry industry and others knowledgeable about poultry genetics and breeding. After examining current poultry production methods and reviewing the

poultry classes defined in 9 CFR 381.170, FSIS and AMS concluded that a number of the poultry class definitions do not adequately reflect current poultry characteristics or industry practices. Therefore, FSIS, in consultation with AMS, determined that the poultry class definitions needed to be revised to more accurately and clearly describe poultry being marketed to consumers and to ensure that the labels for poultry products are truthful and not misleading. FSIS consulted with AMS during this rulemaking because AMS incorporates FSIS' regulatory poultry class standards into its U.S. Classes, Standards, and Grades for Poultry (AMS 70.200 *et seq.*).

In the 2003 proposed rule, in addition to proposing to lower the age definitions for 6 classes of poultry, FSIS requested comments on the merit of establishing ready-to-cook (RTC) [1] carcass weights or maximums for poultry classes. The proposed classes were primarily based on the age and sex of the bird.

2009 Supplemental Proposed Rule

After FSIS published the 2003 proposed rule, AMS provided the Agency with new data that affected the proposed ''roaster'' class definition. These data, which were collected from the segment of the industry that routinely produces ''roasters,'' suggested that a ''roaster'' class definition should include a RTC carcass weight. The data also suggested that FSIS should change the proposed weeks of age in the ''roaster'' class definition. Therefore, on July 13, 2009, FSIS issued a supplemental notice of proposed rulemaking to provide new information on and to re-propose the definition and standard for the ''roaster'' or ''roasting chicken'' (74 FR 33374).

In the preamble to the 2009 supplemental proposed rule, FSIS explained that, on the basis of the new AMS data, the Agency had tentatively concluded that a ''roaster'' or ''roasting chicken'' should be defined as a chicken between 8 and 12 weeks of age. The Agency noted that most of the comments submitted on the 2003 proposed ''roaster'' class definition supported use of this age range for roasters (74 FR 33375).

In the 2009 supplemental proposal, the Agency also explained that it had tentatively concluded that a ''roaster'' or ''roasting chicken'' should be defined as a chicken with an RTC carcass weight of 5 pounds or more, based on survey information from AMS. The Agency stated that including the RTC carcass weight for this class of poultry would effectively differentiate ''roasters'' and ''broilers''. FSIS also explained that it had tentatively concluded that RTC carcass weight, instead of average live weight, is necessary in the class standard and definition so that FSIS can verify the appropriate use of the term ''roaster'' or ''roasting chicken'' on product labels.

FSIS reviewed the other poultry standards with AMS before issuing the 2009 rule and determined that they were still accurate, so the Agency only needed to re-propose the ''roaster'' definition.

Consultation With Advisory Committee

Under section 457(b)(2) of Title 21 of the United States Code, the Secretary of Agriculture is required to consult with the Secretary of Health and Human Services (HHS) and an appropriate advisory committee as provided for in 21 U.S.C. 454 before issuing standards of identity for poultry products. Pursuant to this requirement, FSIS consulted with the Food and Drug Administration (FDA), HHS, when developing the proposed rule. FDA determined that there were no existing product standards established by FDA that would be inconsistent with the revised poultry class standards as proposed. FDA has also reviewed this final rule and has determined that there are no existing FDA product standards that are inconsistent with the revised poultry class standards established in this final rule.

Also, pursuant to this requirement, in 2003, FSIS presented the proposed poultry class standards to the FSIS National Advisory Committee on Meat and Poultry Inspection (NACMPI) for consultation to ensure that there is no inconsistency between Federal and State standards. Comments submitted by NACMPI and FSIS' response are discussed below.

Response to Comments

FSIS received 9 comment letters in response to the 2003 proposed rule and 6 comment letters in response to the 2009 supplemental proposed rule on the ''roaster'' class definition. Comments were submitted by trade associations that represent poultry processors, poultry processors, a non-profit organization that advocates humane treatment of farm animals, and 2 individuals.

After carefully analyzing the comments, FSIS has decided to adopt, with some changes, the poultry class definitions that it proposed in 2003 and the ''roaster'' class definition that it proposed in 2009.

The following is a summary of the comments submitted in response to the 2003 proposed rule and comments submitted in response to the 2009 supplemental proposed rule and FSIS' responses.

Comment: One trade association supported the 2003 proposed rule and stated that they had no objections to the proposed changes for the age definitions, proposed changes to the class definitions, deletion of the word ''usually'' from the age classifications, proposed changes to the game hen classes, and other proposed editorial changes.

Response: FSIS agrees with the comment.

''Roaster'' Class Definition

Comment: In response to the 2003 proposed rule, FSIS received comments from the industry that suggested that FSIS adopt a ''roaster'' class definition that includes both an age range between 9 and 12 weeks at the time of slaughter and an average live flock weight of 7.75 to 8 pounds. The comments stated that a ''roaster'' class definition that includes this age range at the time of slaughter and a minimum average flock weight will provide reasonable parameters for companies that specially produce large, young ''meat-type'' birds.

Response: While FSIS agrees that the ''roaster'' class definition should include both an age range and weight requirements, the Agency does not agree that the weight should be based on the minimum average flock weight. Using RTC weight more accurately reflects the actual weight of the carcass that a consumer is purchasing. This weight is verifiable by the inspector at the processing site. The inspector cannot verify the flock weight. The flock weight is an average of a large number of birds rather than by individual bird. The variability in a flock weight may be large and not as accurate.

After consideration of the comments, and of the information that AMS obtained from ''roaster'' producers, FSIS has decided to adopt a ''roaster'' class definition that reflects AMS' recommendation to define a ''roaster'' as a chicken between 8 and 12 weeks of age and with a RTC carcass weight of 5 pounds or more. AMS' recommendation

[1] *Ready-to-cook poultry* at 9 CFR 381.1 is defined as any slaughtered poultry free from protruding pinfeathers and vestigial feathers (hair or down), from which the head, feet, crop, oil gland, trachea, esophagus, entrails, and lungs have been removed, and from which the mature reproductive organs and kidneys may have been removed, and with or without the giblets, and which is suitable for cooking without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry or other parts of poultry, such as reproductive organs, head, or feet that are suitable for cooking without need of further processing.

is based on the results of a survey of the segment of the industry that produces ''roasters,'' and reflects data on target weights for birds produced from 8 of the 13 ''roaster'' suppliers. FSIS and AMS both agree that a definition that includes RTC carcass weight rather than average live flock weight is necessary for FSIS to verify that the labeling of chickens identified as ''roasters'' is truthful and not misleading. This definition also more accurately reflects the characteristics of poultry labeled as ''roasters.''

Comment: Several comments from trade associations and poultry processors were concerned that the 2003 proposed ''roaster'' age definition of less than 12 weeks with no minimum RTC carcass weight would allow large ''broilers'' to be classified as roasters because of the overlap in the proposed age definition for the ''broiler'' class (less than 10 weeks of age) and the proposed age definition for ''roaster'' class (less than 12 weeks of age).

One comment from a poultry processor asserted that relying only on age requirements and other proposed criteria, such as characteristics of the breastbone cartilage, to define certain poultry classes, particularly the ''roaster'' chicken class, might cause confusion among industry and FSIS inspection program personnel. The comment stated that some establishments and FSIS inspection personnel may conclude that birds less than 12 weeks of age can be classified as either a ''broiler'' or a ''roaster.'' The comment recommended that FSIS allow the ''roaster'' class to be a marketing term that may include young immature poultry from the ''broiler'' class, as long as specified weight requirements are met.

Response: As noted above, the roaster class definition in this final rule includes both an age range of 8 to 12 weeks at the time of slaughter and a RTC carcass weight of 5 pounds or more. A broiler is defined by an age of less than 10 weeks with no specified minimum RTC carcass weight. Although there is some overlap in the age definition for ''broiler'' and ''roasters,'' the higher age limit for the ''roaster'' class combined with the minimum RTC carcass weight provides a way to clearly distinguish a ''broiler'' from a ''roaster.''

Comment: Several comments from poultry processors and an individual recommended that FSIS remove age from the definition of the ''roaster'' class and define ''roaster'' based solely on RTC carcass weight instead. According to the comments, a ''roaster'' class definition that includes the age of the bird is not relevant or meaningful to consumers. The comments asserted that defining the ''roaster'' class by weight alone is sufficient to enable the consumer to identify the product without being misled.

Response: FSIS has determined that the definition needs to include the age range along with a minimum RTC carcass weight to ensure that only young birds are labeled as ''roasters.'' Because production practices and housing technology have changed, the birds come to market weight much quicker than in the past. Therefore, it is important to inform consumers that ''roasters'' are young birds, not the more mature birds that consumers were accustomed to buying in the past. This new roaster definition was requested by the poultry industry and supported by industry comments because a definition that uses both the age and weight information is more likely to provide clarity for industry and consumers.

Most of the comments submitted on the 2003 proposal supported the use of this age range, which is consistent with the age of ''roasters'' in the market today.

Comment: Comments from a trade association and a poultry processor recommended that instead of a 5-pound RTC carcass weight definition for the ''roaster'' class, FSIS should adopt a minimum 5.5-pound RTC carcass weight as the bird exits post-chilling in the slaughter/evisceration process. According to the comment, such a definition will more accurately reflect the weight range of chickens that are marketed as ''roasters'' and ''roasting chickens'' and will maintain a distinction between ''roasters'' and ''broilers'' that are also being grown to heavier weights. Another comment suggested a ''roaster'' class weight definition that would include a 5.5-pound RTC carcass weight for a carcass without giblets at post chill and a 6-pound minimum RTC carcass weight for a carcass packaged with giblets.

Response: As noted above, information that AMS obtained from ''roaster'' producers supports a RTC carcass weight of 5 pounds or more. Birds that have the age and other characteristics of the roaster class and that have a RTC carcass weight of 5.5 pounds would be classified as ''roasters.'' RTC weight has not been based on the weight of the carcass and the weight of the carcass plus giblets.

There was no rationale provided with the comment to support the need for 2 different weight minimums for this class of poultry. FSIS does not believe it is necessary to stipulate a minimum weight based on the carcass plus giblets.

Comment: One comment from a trade association had no opinion on whether FSIS should include a requirement for RTC carcass weights for certain poultry classes but stated that if FSIS were to adopt market-ready weights, the weight designations should not include any added solutions that are used to prepare birds for the cooking process.

Response: The minimum RTC carcass weight for the roaster class applies to carcasses that do not contain added solutions.

Comment: One comment from a poultry processor submitted in 2003 suggested that FSIS delay the issuance of any final rule to update the poultry classes to conduct the appropriate studies in consultation with consumers and the industry to craft a classification standard that accurately reflects what a ''roaster'' is. Another comment from a poultry processor stated that FSIS should consult with a wide cross section of buyers, consumers, and industry to determine the appropriate RTC carcass weight for the ''roaster'' class.

Response: As noted above, after FSIS issued the 2003 proposed rule, AMS collected new data from the segment of the industry that routinely produces ''roasters.'' The agencies used these data to develop a roaster class definition that more accurately reflects the characteristics of chickens marketed as ''roasters'' and requested comments on the revised definition through a supplemental proposed rule.

Comment: Comments from a trade association and a poultry processor stated that FSIS should not require that chickens that meet the definition for the ''roaster'' class be labeled as ''roaster'' or ''roasting chicken.'' The comments suggested that FSIS give companies the option of labeling these birds as ''young chickens.'' According to the comment, the term ''young chicken'' will not mislead consumers because it does not imply the product is somehow superior to a ''roaster'' or ''roasting chicken.''

Another comment from a poultry processor asserted that designation of an RTC chicken carcass as a ''broiler,'' ''fryer,'' ''roaster'' or ''roasting chicken'' is not meaningful to consumers. The comment stated that consumers would likely select the RTC chicken carcass based on their needs in relation to the meal being prepared, e.g., a family of four will likely require a larger RTC chicken carcass than a single adult when preparing the same meal, regardless of how the bird is labeled. The comment said that the similarities between the ''broiler'' or ''fryer'' and ''roaster'' or ''roasting chicken'' class are such that the standards are almost

interchangeable. The comment was concerned that under the proposed definitions, a ''broiler'' could be deemed misbranded simply because the RTC carcass weight infringes on the ''roaster'' class. The comment stated that FSIS should not require that chickens be labeled as a ''broiler,'' ''fryer,'' ''roaster,'' or ''roasting chicken,'' and that companies should have the option to label these poultry as ''young chickens.''

Response: Under the existing regulations, ''broilers,'' and ''roasters'' are permitted to be labeled as ''young chickens.'' 9 CFR 381.117(b) provides that ''[t]he name of the product required to be shown on labels for fresh or frozen raw whole carcasses of poultry shall be in either of the following forms: The name of the kind (such as chicken, turkey, or duck) preceded by the qualifying term ''young'' or ''mature'' or ''old,'' whichever is appropriate; or the appropriate class name as described in 9 CFR 381.170(a).'' This final rule does not change requirements for product names in 9 CFR 381.117(b). Therefore, ''broilers'' and ''roasters'' may continue to be labeled by their class name or as ''young chickens.''

Young Turkeys

Comment: One comment submitted by a trade association that represents turkey processors objected to FSIS' proposal to lower the age for the young turkey class from under 8 months to less than 6 months. The comment stated that lowering the age for young turkeys by 2 months would place an undue burden on several companies that process young turkeys while providing little or no benefit to the consumer. According to the comment, if FSIS were to adopt the proposed reduction in age for the young turkey class, many establishments that process young turkeys would be dangerously close to exceeding or simply would not meet the new age requirements.

Response: After considering the comment, FSIS has decided to not lower the age definition for the young turkey class as proposed. Therefore, this final rule retains the existing ''young turkey'' age definition of less than 8 months.

To lower the definition to less than 6 months may adversely affect establishments that are labeling such birds as ''young turkeys'' under the existing regulations.

After considering the comments and recommendations from AMS, FSIS has concluded that a ''young turkey'' age definition of ''less than 8 months'' continues to accurately represent industry practices and accurately reflects the characteristics of these birds.

Broiler or Fryer Class

Comment: One commenter from a trade association noted that the terms ''broiler'' and ''fryer'' are permitted to be used interchangeably under the ''broiler'' or ''fryer'' chicken class definition. The commenter asserted that the use of both terms for one class of poultry might be confusing to consumers. The commenter suggested that FSIS either define the terms ''broiler'' and ''fryer'' in the regulations or amend the regulations to establish separate classes for ''broiler'' and ''fryer'' chickens, or for any other poultry identified by these terms.

Response: ''Broiler'' and ''fryer'' are regional terms for the same type of bird and are thus used interchangeably. The comment did not submit data to indicate that classifying chickens with certain characteristics as ''broilers'' or ''fryers'' is misleading to consumers. Therefore, FSIS is not establishing separate definitions for ''broiler'' and ''fryer'' chickens in this final rule.

Cornish Game Hens

Comment: One comment from a trade association stated that the term ''hen'' as used in the ''Rock Cornish game hen'' or ''Cornish game hen'' class may be misleading because the term hen implies that these birds are female while the definition states that the birds may be of either sex. The comment suggested that FSIS change the name of this poultry class to ''Rock Cornish game bird'' or ''Cornish game bird.''

Another comment from a poultry producer said that the proposed ''Cornish hen'' definition is inaccurate because it allows industry to call a bird that is not necessarily Cornish, and not necessarily a hen, a ''Cornish hen.'' The comment suggested that FSIS add a definition for ''poussin'' to describe the next youngest bird than the ''Cornish hen'' if the Agency decides to keep the term Cornish hen. The comment suggested that USDA review the literature produced by the North American Meat Processors Association (NAMP) as it applies to usage of the term ''poussin.'' According to the commenter, because USDA is attempting to have its regulations reflect usage in the poultry industry, it must consider not just the production level, but also the market.

Response: FSIS disagrees that the terms ''Rock Cornish game hen'' or ''Cornish game hen'' are misleading to consumers and that the Agency should change the name of the class to ''Rock Cornish game bird'' or ''Cornish game bird.'' The existing terms for this poultry class, which provides for the use of the term ''hen'' for young immature chickens of either sex, has been in place since FSIS established this poultry class definition. The term ''hen'' can be used for immature chickens of either sex because birds of this class are sexually immature. FSIS is not aware of any data to support that consumers are misled with the reference to ''hen'' in these terms. Changing the name of the class is likely to spur confusion.

FSIS also disagrees that the proposed ''Cornish hen'' definition is inaccurate because it allows industry to call a bird that is not necessarily Cornish, and not necessarily a hen, a ''Cornish hen.'' The existing standards in FSIS' regulations do specify that a Cornish chicken be the progeny of a Cornish chicken crossed with another breed of chicken. However, FSIS continues to believe that it is doubtful that any purebred Cornish lines currently exist in commercial chicken production today and, therefore, the birds cannot be reliably distinguished on the basis of progeny.

FSIS also disagrees that it should add a new poultry class that would define poussin. The poultry classes in 9 CFR 381.170 represent poultry that are typically marketed to consumers and are more broadly used than the standards for poussin in NAMP's Poultry Buyers Guide.

Other Comments

Comment: A comment from an organization that advocates humane handling of farm animals and an individual stated that the lower age requirements proposed for certain poultry classes sanction and promote abnormally rapid growth in poultry, which compromises animal welfare and public health. An organization that advocates the humane treatment of farm animals recommended that FSIS adopt a ''no action'' alternative because the proposed amendments are largely unnecessary. According to the commenter, of the 6 definitions proposed for revision, 4 are completely accurate as currently written.

Response: FSIS disagrees that the lower age requirements proposed for the poultry classes compromise animal welfare and public health. The lower age requirements reflect the advancements in breeding and husbandry that have occurred since the poultry classes were established over 40 years ago. These advances have generally shortened the period of time required for birds to attain market-ready weights. FSIS is revising the poultry class standard to better reflect these changes.

Comment: A poultry processor requested that FSIS use this rulemaking

to replace the term ''squab'' in its regulations with ''pigeon.'' The commenter stated that squab should be used to describe a young pigeon in labeling but not to define inspection amenability.

Response: This comment is outside the scope of this rule; however, the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the 2001 Appropriations Act), signed by the President on October 28, 2000, provided inspection amenability for ratites and squabs. The statute specifically states that ''squabs'' are to be inspected under the Poultry Products Inspection Act (PPIA). The 2001 Appropriations Act does not mention pigeons. Subsequently, based on that statute, FSIS conducted rulemaking to include squab in the definition of *Poultry* in 9 CFR 381.1.

Comment: One trade association comment stated that the proposed changes in nomenclature and weight ranges for the poultry classes may bring about price changes that may benefit the industry and retailers but may not result in benefits to consumers.

Response: FSIS does not believe the proposed changes will result in a significant change in the market price of poultry because the rule will not have much effect on consumer behavior. The rule may benefit suppliers because lowering the age limit means the suppliers will not have to keep the birds for as long as they have under current class standards for all classes of poultry whose age limits are lowered by this final rule. However, despite the potential increase in the supply of roasters, consumer demand will determine how many more roasters will be sold. The Agency does not think that the consumers will buy more roasters simply because the proposed rule lowers the age limit.

NACMPI Review

As noted above, in 2003, FSIS presented the proposed poultry class standards to the National Advisory Committee on Meat and Poultry Inspection (NACMPI). NACMPI reviewed the proposed poultry class standards and suggested that FSIS look at poultry production practices for non-traditional raising of poultry, such as organic and free-range. NACMPI recommended that FSIS not exclude any sector of the marketplace from using the standards in labeling because they use different production practices and that FSIS determine whether the non-traditional raising of poultry meets the standards in the proposed rule.

Further, the NACMPI asked if the poultry products imported have their own standard and who would know the ages on the imported poultry product.

In response to NACMPI's request, FSIS consulted with representatives from AMS's National Organic Program (NOP) to determine whether the revisions to the poultry class standards would affect the way that organic poultry are classified and labeled. NOP responded that although it does not have extensive market information on the age and size of organic poultry to fully evaluate the implications of these new classes, it does not anticipate that organic poultry growers will have difficulty raising birds with characteristics of the new class definitions. AMS/NOP contacted a poultry producer (who sells under the broiler or fryer class) to get its perspective on whether such a change would present an issue for the 25,000 organic birds they raise for the market. The producer stated that, although organic birds do take longer to get to market size because of slower weight gain (e.g., about 30% less for organic birds which take about 49 days to attain market weight), the producer does not anticipate a problem marketing ''broilers'' or ''fryers'' as defined in this rule.

In reference to NACMPI's comment on foreign trade, FSIS ensures that inspection systems in countries that export meat, poultry, and processed egg products to the United States are equivalent to those in the United States and that products from these countries are accurately labeled in accordance with domestic requirements. Also, in terms of a trade perspective, the amount of product that USDA could market under these standards of identity is very small in terms of imported product to the United States.

The Final Rule

In this final rule, FSIS is lowering the age definitions for 5 classes of poultry: ''Rock Cornish game hen'' or ''Cornish game hen'' from 5 to 6 weeks to less than 5 weeks (§ 381.170(a)(1)(i)); ''broiler'' or ''fryer'' from under 13 weeks to less than 10 weeks (381.170(a)(1)(ii)); ''roaster'' or ''roasting chicken'' from 3 to 5 months to 8 to 12 weeks of age (381.170(a)(1)(iii)); capon from under 8 months to less than 4 months (381.170(a)(1)(iv)); and fryer-roaster turkey from under 16 weeks to less than 12 weeks (381.170(a)(2)(i)). The Agency decided not to lower the age definition for a 6th class of poultry—young turkey—as proposed (see *RESPONSE TO COMMENTS*). Therefore, the age definition for a young turkey remains at less than 8 months of age. In addition to lowering the age definition for the ''roaster'' class, this final rule also defines a ''roaster'' based on a RTC carcass weight of 5 pounds or more. Consistent with the proposal, the Agency is deleting the word ''usually'' from the age designation descriptions in all of the poultry class standards so that these age designations will be clear and enforceable.

Effective Date

Based on the uniform compliance date regulations, January 1, 2014 is the effective date for this final rule. January 1, 2014 is the uniform compliance date for new food labeling regulations that are issued between January 1, 2011 and December 31, 2012 (75 FR 71344, November 23, 2010.)

Other Provisions

In the 2003 proposed rule at 68 FR 55902, the Agency solicited comments on what age designations would be appropriate for poultry identified as ''young geese,'' ''mature geese,'' ''young guineas'' and ''old guineas'' but the Agency did not receive any comments in response.

Also, as proposed at 68 FR 55903, in addition to the changes made to the poultry class standards, this rule will delete the term ''fully matured'' from the yearling turkey class definition and change the name of the broiler duckling or fryer duckling class to ''duckling.'' Birds in this class of ducks are labeled and marketed as ''ducklings'' without the prefixes ''broiler'' or ''fryer.'' FSIS is changing the name of the roaster duckling class to ''roaster duck.'' Roaster ducks are currently labeled and marketed as ''ducks'' rather that ''ducklings.''

In addition, the class definitions have been edited for clarity, consistency, and uniformity. For example, the class names used within the regulatory text will be placed in quotation marks to make the format of the poultry class standards regulation consistent with the other regulations that prescribe standards of identity for poultry products. References to specific numbers of weeks or months will be preceded by the words ''less than'' or ''more than'' rather than ''under'' or ''in excess of'' to improve the clarity of the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be ''significant'' and was reviewed by the Office of Management and Budget under Executive Order 12866.

Economic Impact of the Classes of Poultry Final Rule

This regulation may have some benefit for the industry, but it will not have a significant effect on the prices of poultry. Lowering the age limit for all the five classes of poultry will benefit the suppliers because they can sell birds at younger ages. In the case of roasters, some of the chickens that are broilers under the current standards will be qualified as roasters and can be sold at a higher per-pound price.[2] However, FSIS does not know how many chickens will be re-classified because there is no Agency data or market data on ages of the chickens in the market. There is also a demand constraint on how many of the re-classified chickens will be actually sold and generate the revenue. Therefore, it is very difficult to quantify the benefits to the industry.

Another possible effect on the industry is associated with possible changes to labels because of changes in classification of poultry. The ''Uniform Compliance Date for Food Labeling Regulations'' (75 FR 71344) allows establishments to incorporate multiple label redesigns required by multiple Federal rules into one modification during 2-year increments. If the establishments combine other labeling changes required by other Federal regulations with the labeling changes under this rule, they can spread out the cost of changing other labels.

On the demand side, this rule will not have much effect on consumers. Although some broilers will be qualified as roasters and become more expensive, consumers who want to buy broilers will still buy broilers. There is no empirical evidence of consumer preference of one class of chicken (roaster or broiler) over the other. In addition, empirical evidence shows that price elasticity for chicken in the United States is quite inelastic.[3] Because the rule will not have a significant effect on the demand side and is not imposing additional cost to the suppliers, there will not be significant change in prices.

Final Regulatory Flexibility Analysis

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–602,) the final rule will not have a significant impact on a substantial number of small entities. The advancements in growing practices and technologies that have occurred since the original poultry class standards were developed are prevalent throughout the industry, regardless of the size of the entity. This rule merely updates existing regulations to reflect current poultry characteristics and production practices used throughout the entire industry. In fact, by lowering the age definition for five classes of poultry, this rule benefits the small and very small establishments as well as the large ones. It is voluntary if the establishments want to sell the large broilers as roasters; and if they decide to do so, the perceived benefits must outweigh the associated cost, such as labeling changes.

The Agency has considered two alternatives to this rulemaking. The first alternative is no rulemaking and to keep the old definitions. However, these definitions fail to take into account current poultry production practices, which have generally shortened the period of time required for poultry to gain market-ready weights. The second option is to use a weight range to define turkey and roaster classes. However, for turkeys, the Agency found such a class system would not accurately distinguish birds that differ significantly in relevant characteristics. As for roasters, information also suggests that classifying by weight alone is not an accepted practice industry-wide. In any case, both the alternatives would apply to the entire industry, and neither would have a differential effect on the small and very small establishments.

Paperwork Requirements

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and has determined that the information collection related to labeling has been approved by OMB under OMB Control Number 0583–0092.

FSIS does not anticipate many changes of labels due to changes in classification of poultry because many establishments are already using terms that meet the classifications established by this rule. In addition, the natural turnover of labels for poultry produced in a federally inspected facility will allow poultry establishments to incorporate label redesigns into one modification in 2-year increments based on the Uniform Compliance Date for Food Labeling Regulations (75 FR 71344). This rule established January 1, 2014, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2011, and December 31, 2012. Hence, there will be basically no additional paperwork burden for establishments.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

USDA Nondiscrimination Statement

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Additional Public Notification

FSIS will announce this final rule online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Interim_&_Final_Rules/index.asp.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or

[2] AMS data shows the per-pound price for roasters are $0.14 higher than broilers in 2009. *USDA Weekly Chicken Feature Activity, July 23, 2010. http:/www.ams.usda.gov/pymarketnews.*

[3] For example, a study by the Research Triangle Institute (RTI) found that U.S. demand elasticity to be −. 43 for young chickens and − 0.62 for other chickens. *Poultry Slaughter and Processing Sector Facility-Level Model, Final Report.* RTI. April, 2006.

delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects in 9 CFR Part 381

Food grades and standards, Poultry and poultry products.

For the reasons stated in the preamble, FSIS amends 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

■ 2. Section 381.170 is amended by revising paragraph (a) to read as follows:

§ 381.170 Standards for kinds and classes, and for cuts of raw poultry.

(a) The following standards specify the various classes of the specified kinds of poultry and the requirements for each class:

(1) *Chickens*—(i) *Rock Cornish game hen or Cornish game hen.* A ''Rock Cornish game hen'' or ''Cornish game hen'' is a young, immature chicken (less than 5 weeks of age), of either sex, with a ready-to-cook carcass weight of not more than 2 pounds.

(ii) *Broiler or fryer.* A ''broiler'' or ''fryer'' is a young chicken (less than 10 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and flexible breastbone cartilage.

(iii) *Roaster or roasting chicken.* A ''roaster'' or ''roasting chicken'' is a young chicken (between 8 and 12 weeks of age), of either sex, with a ready-to-cook carcass weight of 5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer.

(iv) *Capon.* A ''capon'' is a surgically neutered male chicken (less than 4 months of age) that is tender-meated with soft, pliable, smooth-textured skin.

(v) *Hen, fowl, baking chicken, or stewing chicken.* A ''hen,'' ''fowl,'' ''baking chicken,'' or ''stewing chicken'' is an adult female chicken (more than 10 months of age) with meat less tender than that of a roaster or roasting chicken and a nonflexible breastbone tip.

(vi) *Cock or rooster.* A ''cock'' or ''rooster'' is an adult male chicken with coarse skin, toughened and darkened meat, and a nonflexible breastbone tip.

(2) *Turkeys*—(i) *Fryer-roaster turkey.* A ''fryer-roaster turkey'' is an immature turkey (less than 12 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin, and flexible breastbone cartilage.

(ii) *Young turkey.* A ''young turkey'' is a turkey (less than 8 months of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is less flexible than that of a fryer-roaster turkey.

(iii) *Yearling turkey.* A ''yearling turkey'' is a turkey (less than 15 months of age), of either sex, that is reasonably tender-meated with reasonably smooth-textured skin.

(iv) *Mature or old (hen or tom) turkey.* A ''mature turkey'' or ''old turkey'' is an adult turkey (more than 15 months of age), of either sex, with coarse skin and toughened flesh. Sex designation is optional.

(3) *Ducks*—(i) *Duckling.* A ''duckling'' is a young duck (less than 8 weeks of age), of either sex, that is tender-meated and has a soft bill and soft windpipe.

(ii) *Roaster duck.* A ''roaster duck'' is a young duck (less than 16 weeks of age), of either sex, that is tender-meated and has a bill that is not completely hardened and a windpipe that is easily dented.

(iii) *Mature duck or old duck.* A ''mature duck'' or an ''old duck'' is an adult duck (more than 6 months of age), of either sex, with toughened flesh, a hardened bill, and a hardened windpipe.

(4) *Geese*—(i) *Young goose.* A ''young goose'' is an immature goose, of either sex, that is tender-meated and has a windpipe that is easily dented.

(ii) *Mature goose or old goose.* A ''mature goose'' or ''old goose'' is an adult goose, of either sex, that has toughened flesh and a hardened windpipe.

(5) *Guineas*—(i) *Young guinea.* A ''young guinea'' is an immature guinea, of either sex, that is tender-meated and has a flexible breastbone cartilage.

(ii) *Mature guinea or old guinea.* A ''mature guinea'' or ''old guinea'' is an adult guinea, of either sex, that has toughened flesh and a non-flexible breastbone.

* * * * *

Done at Washington, DC on October 27, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–28525 Filed 11–2–11; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1435]

RIN No. 7100 AD 85

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2012. The Regulation D amendments set the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2012 at $11.5 million (up from $10.7 million in 2011). This amount is known as the reserve requirement exemption amount. The Regulation D amendments also set the amount of net transaction accounts at each depository institution that is subject to a three percent reserve requirement in 2012 at $71.0 million (up from $58.8 million in 2011). This amount is known as the low reserve tranche. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act.

The Board is also announcing changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency at which depository institutions must submit deposit reports.

DATES: *Effective date:* December 5, 2011.

Compliance dates: For depository institutions that report deposit data weekly, the new low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve computation period that begins Tuesday, November 29, 2011, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 29, 2011. For depository institutions that report deposit data quarterly, the new low reserve tranche and reserve requirement exemption amount will apply to the seven-day reserve computation period that begins Tuesday, December 20, 2011, and the corresponding seven-day reserve maintenance period that begins Thursday, January 19, 2012. For all depository institutions, these new values of the nonexempt deposit cutoff level, the reserve requirement

exemption amount, and the reduced reporting limit will be used to determine the frequency at which a depository institution submits deposit reports effective in either June or September 2012.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202) 452–3565, Legal Division, or Christian S. Miller, Financial Analyst (202) 452–3769, Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

Reserve Requirements

Pursuant to section 19(b) of the Federal Reserve Act (Act), transaction account balances maintained at each depository institution are subject to reserve requirement ratios of zero, three, or ten percent. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. No adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions increased about 9.4 percent (from $4,928 billion to $5,392 billion) between June 30, 2010, and June 30, 2011. Accordingly, the Board is amending Regulation D to set the reserve requirement exemption amount for 2012 at $11.5 million, an increase of $0.8 million from its level in 2011.[1]

Pursuant to Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)), transaction account balances maintained at each depository institution over the reserve requirement exemption amount and up to a certain amount, known as the low reserve tranche, are subject to a three percent reserve requirement. Transaction account balances over the low reserve tranche are subject to a ten percent reserve requirement. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Net transaction accounts of all depository institutions increased 25.9 percent (from $944 billion to $1,188 billion) between June 30, 2010 and June 30, 2011. Accordingly, the Board is amending Regulation D to increase the low reserve tranche for net transaction accounts by $12.2 million, from $58.8 million for 2011 to $71.0 million for 2012.

For depository institutions that file deposit reports weekly, the new low reserve tranche and reserve requirement exemption amount will be effective for the fourteen-day reserve computation period beginning Tuesday, November 29, 2011, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 29, 2011. For depository institutions that report quarterly, the new low reserve tranche and reserve requirement exemption amount will be effective for the seven-day reserve computation period beginning Tuesday, December 20, 2011, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 19, 2012.

2. Deposit Reports

Section 11(b)(2) of the Federal Reserve Act authorizes the Board to require depository institutions to file reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable it to discharge its responsibility to monitor and control the monetary and credit aggregates. The Board screens depository institutions each year and assigns them to one of four deposit reporting panels (weekly reporters, quarterly reporters, annual reporters, or nonreporters). The panel assignment for annual reporters is effective in June of the screening year; the panel assignment for weekly and quarterly reporters is effective in September of the screening year.

In order to ease reporting burden, the Board permits smaller depository institutions to submit deposit reports less frequently than larger depository institutions. The Board permits depository institutions with net transaction accounts above the reserve requirement exemption amount but total transaction accounts, savings deposits, and small time deposits below a specified level (the ''nonexempt deposit cutoff'') to report deposit data quarterly. Depository institutions with net transaction accounts above the reserve requirement exemption amount but with total transaction accounts, savings deposits, and small time deposits above the nonexempt deposit cutoff are required to report deposit data weekly. The Board requires certain large depository institutions to report weekly regardless of the level of their net transaction accounts if the depository institution's total transaction accounts, savings deposits, and small time deposits exceeds a specified level (the ''reduced reporting limit''). The nonexempt deposit cutoff level and the reduced reporting limit are adjusted annually, by an amount equal to 80 percent of the increase, if any, in total transaction accounts, savings deposits, and small time deposits of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

From June 30, 2010 to June 30, 2011, total transaction accounts, savings deposits, and small time deposits at all depository institutions increased 9.3 percent (from $7,473 billion to $8,171 billion). Accordingly, the Board is increasing the nonexempt deposit cutoff level by $18.9 million to $ 271.5 million for 2012 (up from $252.6 million in 2011). The Board is also increasing the reduced reporting limit by $106 million

[1] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

to $1.521 billion in 2012 (up from $1.415 billion for 2011).[2]

Beginning in 2012, the boundaries of the four deposit reporting panels will be defined as follows. Those depository institutions with net transaction accounts over $11.5 million (the reserve requirement exemption amount) or with total transaction accounts, savings deposits, and small time deposits greater than or equal to $1.521 billion (the reduced reporting limit) are subject to detailed reporting, and must file a Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900 report) either weekly or quarterly. Of this group, those with total transaction accounts, savings deposits, and small time deposits greater than or equal to $271.5 million (the nonexempt deposit cutoff level) are required to file the FR 2900 report each week, while those with total transaction accounts, savings deposits, and small time deposits less than $271.5 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $11.5 million (the reserve requirement exemption amount) and with total transaction accounts, savings deposits, and small time deposits less than $1.521 billion (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $11.5 million (but with total transaction accounts, savings deposits, and small time deposits less than $1.521 billion) are required to file the Annual Report of Deposits and Reservable Liabilities (FR 2910a) report annually, while those with total deposits less than or equal to $11.5 million are not required to file a deposit report. A depository institution that adjusts reported values on its FR 2910a report in order to qualify for reduced reporting will be shifted to an FR 2900 reporting panel.

Notice and Regulatory Flexibility Act. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The adjustments in the reserve requirement exemption amount, the low reserve tranche, the nonexempt deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.4(f) is revised to read as follows:

§ 204.4 Computation of required reserves.

* * * * *

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios below to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

Reservable liability	Reserve requirement
Net Transaction Accounts:	
$0 to reserve requirement exemption amount ($11.5 million)	0 percent of amount.
Over reserve requirement exemption amount $11.5 million) and up to low reserve tranche ($71.0 million).	3 percent of amount.
Over low reserve tranche ($71.0 million)	$1,785,000 plus 10 percent of amount over $71.0 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–28048 Filed 11–2–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 4

[CBP Dec. 11–21]

Addition of the Cook Islands to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of State has informed U.S. Customs and Border Protection (CBP) that discriminating or countervailing duties are not imposed by the government of the Cook Islands on vessels owned by citizens of the United States. Accordingly, vessels of the Cook Islands are exempt from special tonnage taxes and light money in ports of the United States. This document amends the CBP regulations by adding the Cook Islands to the list of nations whose vessels are exempt from payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

DATES: This amendment is effective November 3, 2011. The exemption from special tonnage taxes and light money

[2] Consistent with Board practice, the nonexempt deposit cutoff level has been rounded to the nearest $0.1 million, and the reduced reporting limit has been rounded to the nearest $1 million.

for vessels registered in the Cook Islands became applicable on August 22, 2011.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Chief, Cargo Security, Carriers and Immigration Branch, Regulations and Rulings, Office of International Trade, (202) 325–0082.

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called ''light money,'' on all foreign vessels which enter U.S. ports (46 U.S.C. 60302–60303). However, vessels of a foreign country may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that the government of that foreign country does not impose discriminatory or countervailing duties to the disadvantage of the United States (46 U.S.C. 60304).

Section 4.22, U.S. Customs and Border Protection (CBP) regulations (19 CFR 4.22), lists those countries whose vessels have been found to be exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The authority to amend this section of the CBP regulations has been delegated to the Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

By letter dated August 22, 2011, the Department of State informed CBP that the government of the Cook Islands does not impose discriminating or countervailing duties on vessels owned by citizens of the United States. Accordingly, the Department of State recommended that the Cook Islands be added to the list of countries whose vessels are exempt from special tonnage taxes and light money in ports of the United States, effective August 22, 2011.

Finding

On the basis of the above-mentioned information from the Department of State regarding the absence of discriminating or countervailing duties imposed by the government of the Cook Islands on vessels owned by citizens of the United States, CBP considers vessels of the Cook Islands to be exempt from the payment of special tonnage tax and light money, effective August 22, 2011. The CBP regulations are amended accordingly.

Inapplicability of Notice and Delayed Effective Date

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, CBP has determined that notice and public procedure are unnecessary pursuant to section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)). Further, for the same reasons, good cause exists for dispensing with a delayed effective date under section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)).

Regulatory Flexibility Act and Executive Order 12866

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. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subjects in 19 CFR Part 4

Cargo vessels, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the CBP Regulations

For the reasons set forth above, part 4 of Title 19 of the Code of Federal Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and the specific authority for § 4.22 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.22 also issued under 46 U.S.C. 60301, 60302, 60303, 60304, 60305, 60306, 60312, 60503;

* * * * *

§ 4.22 [Amended]

■ 2. Section 4.22 is amended by adding the ''Cook Islands'' in appropriate alphabetical order.

Dated: October 28, 2011.

Joanne Roman Stump,

Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

[FR Doc. 2011–28472 Filed 11–2–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 162, 163, and 178

[USCBP–2011–0043; CBP Dec. 11–22]

RIN 1515–AD79

United States-Peru Trade Promotion Agreement

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This rule amends the U.S. Customs and Border Protection (CBP) regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States-Peru Trade Promotion Agreement.

DATES: Interim rule effective November 3, 2011; comments must be received by January 3, 2012.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2011–0043.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC.

Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Nancy Mondich, Trade Policy and Programs, Office of International Trade, (202) 863–6524.

Other Operational Aspects: Katrina Chang, Trade Policy and Programs, Office of International Trade, (202) 863–6532.

Legal Aspects: Karen Greene, Regulations and Rulings, Office of International Trade, (202) 325–0041.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these regulations will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

Background

On April 12, 2006, the United States and Peru (the ''Parties'') signed the United States-Peru Trade Promotion Agreement (''PTPA'' or ''Agreement''), and on June 24 and June 25, 2007, the Parties signed a protocol amending the Agreement. The stated objectives of the PTPA include: strengthening the special bonds of friendship and cooperation between the Parties and promoting regional economic integration; promoting broad-based economic development in order to reduce poverty and generate opportunities for sustainable economic alternatives to drug-crop production; creating new employment opportunities and improving labor conditions and living standards in the Parties; establishing clear and mutually advantageous rules governing trade between the Parties; ensuring a predictable legal and commercial framework for business and investment; fostering creativity and innovation and promoting trade in the innovative sections of the Parties' economies; promoting transparency and preventing and combating corruption, including bribery, in international trade and investment; protecting, enhancing, and enforcing basic workers' rights, and strengthening cooperation on labor matters; implementing the Agreement in a manner consistent with environmental protection and conservation, promoting sustainable development, and strengthening cooperation on environmental matters; and contributing to hemispheric integration and providing an impetus toward establishing the Free Trade Area of the Americas.

The provisions of the PTPA were adopted by the United States with the enactment on December 14, 2007, of the United States-Peru Trade Promotion Agreement Implementation Act (the ''Act''), Public Law 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note). Section 209 of the Act requires that regulations be prescribed as necessary to implement the provisions of the PTPA.

On January 16, 2009, the President signed Proclamation 8341 to implement the provisions of the PTPA. The Proclamation, which was published in the **Federal Register** on January 22, 2009 (74 FR 4105), modified the Harmonized Tariff Schedule of the United States (''HTSUS'') as set forth in Annexes I and II of Publication 4058 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 32, incorporating the relevant PTPA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the PTPA where the special program indicator ''PE'' appears in parenthesis in the ''Special'' rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XVII to Chapter 99 to provide for temporary tariff-rate quotas and applicable safeguards implemented by the PTPA. After the Proclamation was signed, CBP issued instructions to the field and the public implementing the Agreement by allowing the trade to receive the benefits under the PTPA effective on or after February 1, 2009.

U.S. Customs and Border Protection (''CBP'') is responsible for administering the provisions of the PTPA and the Act that relate to the importation of goods into the United States from Peru. Those customs-related PTPA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Initial Provisions and General Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Textiles and Apparel), Chapter Four (Rules of Origin and Origin Procedures), and Chapter Five (Customs Administration and Trade Facilities).

Certain general definitions set forth in Chapter One of the PTPA have been incorporated into the PTPA implementing regulations. These regulations also implement Article 2.6 (Goods Re-entered After Repair or Alteration) of the PTPA.

Chapter Three of the PTPA sets forth provisions relating to trade in textile and apparel goods between Peru and the United States. The provisions within Chapter Three that require regulatory action by CBP are Articles 3.2 (Customs Cooperation and Verification of Origin), Article 3.3 (Rules of Origin, Origin Procedures, and Related Matters), and Article 3.5 (Definitions).

Chapter Four of the PTPA sets forth the rules for determining whether an imported good is an originating good of a Party and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment under the PTPA as specified in the Agreement and the HTSUS. The basic rules of origin in Section A of Chapter Four are set forth in General Note 32, HTSUS.

Under Article 4.1 of Chapter Four, originating goods may be grouped in three broad categories: (1) Goods that are wholly obtained or produced entirely in the territory of one or both of the Parties; (2) goods that are produced entirely in the territory of one or both of the Parties and that satisfy the product-specific rules of origin in PTPA Annex 4.1 (change in tariff classification requirement and/or regional value content requirement) or Annex 3–A (textile and apparel specific rules of origin) and all other applicable requirements of Chapter Four; and (3) goods that are produced entirely in the territory of one or both of the Parties exclusively from originating materials. Article 4.2 sets forth the methods for calculating the regional value content of a good. Articles 4.3 and 4.4 set forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the *de minimis* criterion. Article 4.5 provides that production that takes place in the territory of one or both of the Parties may be accumulated such that, provided other requirements are met, the resulting good is considered originating. Article 4.6 provides a *de minimis* criterion. The remaining Articles within Section A of Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible goods and materials, accessories, spare parts, and tools, sets, packaging materials and containers for retail sale, packing materials and containers for shipment,

indirect materials, transit and transshipment, and consultation and modifications. All Articles within Section A are reflected in the PTPA implementing regulations, except for Article 4.14 (Consultation and Modifications).

Section B of Chapter Four sets forth procedures that apply under the PTPA in regard to claims for preferential tariff treatment. Specifically, Section B includes provisions concerning claims for preferential tariff treatment, recordkeeping requirements, verification of preference claims, obligations relating to importations and exportations, common guidelines, implementation, and definitions of terms used within the context of the rules of origin. All Articles within Section B, except for Articles 4.21 (Common Guidelines) and 4.22 (Implementation) are reflected in these implementing regulations.

Chapter Five sets forth operational provisions related to customs administration and trade facilitation under the PTPA. Article 5.9, concerning the general application of penalties to PTPA transactions, is the only provision within Chapter Five that is reflected in the PTPA implementing regulations.

In order to provide transparency and facilitate their use, the majority of the PTPA implementing regulations set forth in this document have been included within Subpart Q in Part 10 of the CBP regulations (19 CFR part 10). However, in those cases in which PTPA implementation is more appropriate in the context of an existing regulatory provision, the PTPA regulatory text has been incorporated in an existing Part within the CBP regulations. In addition, this document sets forth several cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new PTPA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Peru for which, like goods originating in Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, or Oman, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of PTPA Article 2.5 (Temporary Admission of Goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart Q

General Provisions

Section 10.901 outlines the scope of Subpart Q, Part 10 of the CBP regulations. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart Q, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart Q, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.902 sets forth definitions of common terms used in multiple contexts or places within Subpart Q, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 1.3 and Annex 1.3 of the PTPA, and § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions that apply in a more limited Subpart Q, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.903 sets forth the procedure for claiming PTPA preferential tariff treatment at the time of entry and, as provided in PTPA Article 4.15.1, states that an importer may make a claim for PTPA preferential tariff treatment based on a certification by the importer, exporter, or producer or the importer's knowledge that the good is an originating good. Section 10.903 also provides, consistent with PTPA Article 4.19.4(d), that when an importer has reason to believe that a claim is based on inaccurate information, the importer must correct the claim and pay any duties that may be due.

Section 10.904, which is based on PTPA Articles 4.15 and 4.19.4, requires a U.S. importer, upon request, to submit a copy of the certification of the importer, exporter, or producer if the certification forms the basis for the claim. Section 10.904 specifies the information that must be included on the certification, sets forth the circumstances under which the certification may be prepared by the exporter or producer of the good, and provides that the certification may be used either for a single importation or for multiple importations of identical goods.

Section 10.905 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment. Section 10.906, which is based on PTPA Article 4.16, provides that the certification is not required for certain non-commercial or low-value importations.

Section 10.907 implements PTPA Article 4.17 concerning the maintenance of relevant records regarding the imported good.

Section 10.908, which reflects PTPA Article 4.19.2, authorizes the denial of PTPA tariff benefits if the importer fails to comply with any of the requirements under Subpart Q, Part 10, CBP regulations.

Export Requirements

Section 10.909, which implements PTPA Articles 4.20.1 and 4.17.1, sets forth certain obligations of a person who completes and issues a certification for a good exported from the United States to Peru. Paragraphs (a) and (b) of § 10.909, reflecting PTPA Article 4.20.1, require a person who completes such a certification to provide a copy of the certification to CBP upon request and to give prompt notification of any errors in the certification to every person to whom the certification was given. Paragraph (c) of § 10.909 reflects Article 4.17.1, concerning the recordkeeping requirements that apply to a person who completes and issues a certification for a good exported from the United States to Peru.

Post-Importation Duty Refund Claims

Sections 10.910 through 10.912 implement PTPA Article 4.19.5 and section 206 of the Act, which allow an importer who did not claim PTPA tariff benefits on a qualifying good at the time of importation to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

Rules of Origin

Sections 10.913 through 10.925 provide the implementing regulations regarding the rules of origin provisions of General Note 32, HTSUS, Chapter Four and Article 3.3 of the PTPA, and section 203 of the Act.

Definitions

Section 10.913 sets forth terms that are defined for purposes of the rules of origin.

General Rules of Origin

Section 10.914 sets forth the basic rules of origin established in Article 4.1 of the PTPA, section 203(b) of the Act, and General Note 32(b), HTSUS. The provisions of § 10.914 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 32, HTSUS. Section 10.914(a) specifies those goods that are originating goods because they are wholly obtained or produced entirely in the territory of one or both of the Parties.

Section 10.914(b) provides that goods that have been produced entirely in the territory of one or both of the Parties from non-originating materials each of which undergoes an applicable change in tariff classification and satisfies any applicable regional value content or other requirement set forth in General Note 32, HTSUS, are originating goods. Essential to the rules in § 10.914(b) are the specific rules of General Note 32(n), HTSUS, which are incorporated by reference.

Section 10.914(c) provides that goods that have been produced entirely in the territory of one or both of the Parties exclusively from originating materials are originating goods.

Value Content

Section 10.915 reflects PTPA Article 4.2 concerning the basic rules that apply for purposes of determining whether an imported good satisfies a minimum regional value content (''RVC'') requirement. Section 10.916, reflecting PTPA Articles 4.3 and 4.4, sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the *de minimis* rules.

Accumulation

Section 10.917, which is derived from PTPA Article 4.5, sets forth the rule by which originating materials from the territory of a Party that are used in the production of a good in the territory of the other Party will be considered to originate in the territory of that other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of one or both of the Parties is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the PTPA.

De Minimis

Section 10.918, as provided for in PTPA Article 4.6, sets forth *de minimis* rules for goods that may be considered to qualify as originating goods even though they fail to qualify as originating goods under the rules specified in § 10.594. There are a number of exceptions to the *de minimis* rule set forth in PTPA Annex 4.6 (Exceptions to Article 4.6) as well as a separate rule for textile and apparel goods.

Fungible Goods and Materials

Section 10.919, as provided for in PTPA Article 4.7, sets forth the rules by which ''fungible'' goods or materials may be claimed as originating.

Accessories, Spare Parts, or Tools

Section 10.920, as set forth in PTPA Article 4.8, specifies the conditions under which a good's standard accessories, spare parts, or tools are: (1) Treated as originating goods; and (2) disregarded in determining whether all non-originating materials undergo an applicable change in tariff classification under General Note 32(n), HTSUS.

Goods Classifiable as Goods Put Up in Sets

Section 10.921, which is based on PTPA Articles 3.3.10 and 4.9, provides that, notwithstanding the specific rules of General Note 32(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not qualify as originating goods unless: (1) Each of the goods in the set is an originating good; or (2) the total value of the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set, or 10 percent of the adjusted value of the set in the case of textile or apparel goods.

Packaging Materials and Packing Materials

Sections 10.922 and 10.923, which are derived from PTPA Articles 4.10 and 4.11, respectively, provide that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin in determining whether non-originating materials undergo an applicable change in tariff classification under General Note 32(n), HTSUS. These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

Indirect Materials

Section 10.924, as set forth in PTPA Article 4.12, provides that indirect materials, as defined in § 10.902(m), are considered to be originating materials without regard to where they are produced.

Transit and Transshipment

Section 10.925, which is derived from PTPA Article 4.13, sets forth the rule that an originating good loses its originating status and is treated as a non-originating good if, subsequent to production in the territory of one or both of the Parties that qualifies the good as originating, the good: (1) Undergoes production outside the territories of the Parties, other than certain specified minor operations; or (2) does not remain under the control of customs authorities in the territory of a non-Party.

Origin Verifications and Determinations

Section 10.926 implements PTPA Article 4.18 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to PTPA preferential tariff treatment. This section also governs the conduct of verifications directed to producers of materials that are used in the production of a good for which PTPA preferential duty treatment is claimed.

Section 10.927, which reflects PTPA Article 3.2, sets forth the verification and enforcement procedures specifically relating to trade in textile and apparel goods.

Section 10.928 provides the procedures that apply when preferential tariff treatment is denied on the basis of an origin verification conducted under this subpart.

Section 10.929 implements PTPA Article 4.18.5 and § 205(b) of the Act, concerning the denial of preferential tariff treatment in situations in which there is a pattern of conduct by an importer, exporter, or producer of false or unsupported PTPA preference claims.

Penalties

Section 10.930 concerns the general application of penalties to PTPA transactions and is based on PTPA Article 5.9.

Section 10.931 reflects PTPA Article 4.19.3 and § 205(a)(1) of the Act with regard to an exception to the application of penalties in the case of an importer who promptly and voluntarily makes a corrected claim and pays any duties owing.

Section 10.932 implements PTPA Article 4.20.2 and § 205(a)(2) of the Act,

concerning an exception to the application of penalties in the case of a U.S. exporter or producer who promptly and voluntarily provides notification of the making of an incorrect certification with respect to a good exported to Peru.

Section 10.933 sets forth the circumstances under which the making of a corrected claim or certification by an importer or the providing of notification of an incorrect certification by a U.S. exporter or producer will be considered to have been done ''promptly and voluntarily''. Corrected claims or certifications that fail to meet these requirements are not excepted from penalties, although the U.S. importer, exporter, or producer making the corrected claim or certification may, depending on the circumstances, qualify for a reduced penalty as a prior disclosure under 19 U.S.C. 1592(c)(4). Section 10.932 also specifies the content of the statement that must accompany each corrected claim or certification.

Goods Returned After Repair or Alteration

Section 10.934 implements PTPA Article 2.6 regarding duty-free treatment for goods re-entered after repair or alteration in Peru.

Part 24

An amendment is made to § 24.23(c), which concerns the merchandise processing fee, to implement § 204 of the Act, providing that the merchandise processing fee is not applicable to goods that qualify as originating goods under the PTPA.

Part 162

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional PTPA records maintenance and examination provisions contained in Subpart Q, Part 10, CBP regulations.

Part 163

A conforming amendment is made to § 163.1 to include the maintenance of any documentation that the importer may have in support of a claim for preference under the PTPA as an activity for which records must be maintained. Also, the list of records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) list) is also amended to add the records that the importer may have in support of a PTPA claim for preferential tariff treatment.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for preferential tariff treatment under the PTPA and the Act.

Inapplicability of Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act (''APA'') (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to an agency rulemaking to the extent that it involves a foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States because they implement preferential tariff treatment and related provisions of the PTPA. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider all comments received before issuing a final rule.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 4, 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in these regulations are under the review of the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information in these regulations are in §§ 10.903 and 10.904. This information is required in connection with claims for preferential tariff treatment under the PTPA and the Act and will be used by CBP to determine eligibility for tariff preference under the PTPA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 800 hours.

Estimated average annual burden per respondent: .2 hours.

Estimated number of respondents: 4,000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229–1179.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting

procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

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

Amendments to the Regulations

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for Part 10 continues to read, and the specific authority for new Subpart Q is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.901 through 10.934 also issued under 19 U.S.C. 1202 (General Note 32, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note).

■ 2. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, or Peru and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Note 12, 25, 26, 27, 29, 30, 31, and 32, HTSUS, in the country of which the importer is a resident.

■ 3. Add Subpart Q to read as follows:

Subpart Q—United States-Peru Trade Promotion Agreement

General Provisions

Sec.

Import Requirements

Export Requirements

Post-Importation Duty Refund Claims

Rules of Origin

Origin Verifications and Determinations

Penalties

Goods Returned After Repair or Alteration

Subpart Q—United States-Peru Trade Promotion Agreement

General Provisions

§ 10.901 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Peru Trade Promotion Agreement (the PTPA) signed on April 12, 2006, and under the United States-Peru Trade Promotion Agreement Implementation Act (the Act; Pub. L. 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the PTPA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.902 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the PTPA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs authority.* ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the PTPA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation;

(e) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,* which is part of the WTO Agreement;

(f) *Days.* ''Days'' means calendar days;

(g) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994,* which is part of the *WTO Agreement;*

(i) *Harmonized System.* ''Harmonized System'' means the *Harmonized Commodity Description and Coding System,* including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(j) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(k) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(l) *Identical goods.* ''Identical goods'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(m) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good in the territory of one or both of the Parties, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production;

(n) *Originating.* ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in Chapter Four and Article 3.3 of the PTPA, and General Note 32, HTSUS;

(o) *Party.* ''Party'' means the United States or Peru;

(p) *Person.* ''Person'' means a natural person or an enterprise;

(q) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable under the PTPA to an originating good, and an exemption from the merchandise processing fee;

(r) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(s) *Textile or apparel good.* ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3–C of the PTPA;

(t) *Territory.* ''Territory'' means:

(1) With respect to Peru, the continental territory, the islands, the maritime areas and the air space above them, in which Peru exercises sovereignty and jurisdiction or sovereign rights in accordance with its domestic law and international law;

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(u) *WTO.* ''WTO'' means the World Trade Organization; and

(v) *WTO Agreement.* ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

Import Requirements

§ 10.903 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim.* An importer may make a claim for PTPA preferential tariff treatment, including an exemption from the merchandise processing fee, based on:

(1) A certification, as specified in § 10.904 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim.* The claim is made by including on the entry summary, or equivalent documentation, the letters ''PE'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim.* If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.931 and 10.933 of this subpart).

§ 10.904 Certification.

(a) *General.* An importer who makes a claim under § 10.903(b) of this subpart based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the port director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone, and email address (if any) of the importer of record of the good, the exporter of the good (if different from the producer), and the producer of the good;

(ii) The legal name, address, telephone, and email address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently

detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 32(n), HTSUS; and

(v) The applicable rule of origin set forth in General Note 32, HTSUS, under which the good qualifies as an originating good; and

(4) Must include a statement, in substantially the following form:

I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Peru Trade Promotion Agreement; and

This document consists of _____ pages, including all attachments.

(b) *Responsible official or agent.* The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certification provided for in paragraph (a) of this section must be completed in either the English or Spanish language. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer.* A certification may be prepared by the exporter or producer of the good on the basis of:

(1) The exporter's or producer's knowledge that the good is originating; or

(2) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(e) *Applicability of certification.* The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification.* A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was signed.

§ 10.905 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.903(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the PTPA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.904 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* §§ 10.931 and 10.933 of this subpart).

§ 10.906 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.904 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.904 of this subpart, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.907 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.903(b) of this subpart must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the PTPA. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.908 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.904 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the PTPA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.925(a) of this subpart were met.

Export Requirements

§ 10.909 Certification for goods exported to Peru.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Peru must provide a copy of the certification (or such other medium or format approved by the Peru customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes

and issues a certification for a good exported from the United States to Peru and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.932 and 10.933 of this subpart).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to Peru must maintain, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in Part 163 of this chapter.

Post-Importation Duty Refund Claims

§ 10.910 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.911 of this subpart. Subject to the provisions of § 10.908 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.912(c) of this subpart.

§ 10.911 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a certification prepared in accordance with § 10.904 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.912 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.911 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed under § 10.911 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.911 of this subpart until judicial review has been completed.

(c) *Allowance of claim.* (1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under § 10.911 of this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under § 10.911 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.911 of this subpart.

(d) *Denial of claim.* (1) *General.* The port director may deny a claim for a refund filed under § 10.911 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.908 and 10.911 of this subpart, or if, following an origin verification under § 10.926 of this subpart, the port director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.926 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

Rules of Origin

§ 10.913 Definitions.

For purposes of §§ 10.913 through 10.925:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) *Class of motor vehicles.* ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, HTSUS;

(2) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, HTSUS, or motor vehicles provided for in subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles provided for in subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible good or material.* ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or more of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or more of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) Vessels registered or recorded with Peru and flying its flag; or

(ii) Vessels documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in aragraph (g)(6) of this section, if such factory ships are:

(i) Registered or recorded with Peru and fly its flag; or

(i) Documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Material.* ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(i) *Model line.* ''Model line'' means a group of motor vehicles having the same platform or model name;

(j) *Net cost.* ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) *Non-allowable interest costs.* ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the Party in which the producer is located;

(l) *Non-originating good or non-originating material.* ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 32, HTSUS, or this subpart;

(m) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer.* ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Reasonably allocate.* ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(q) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(r) *Remanufactured good.* ''Remanufactured good'' means an industrial good assembled in the territory of one or both of the Parties that is classified in Chapter 84, 85, 87, or 90 or heading 9402, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to a new good that is classified in one of the enumerated HTSUS chapters or headings;

(s) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(t) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(u) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(v) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(w) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(x) *Used.* ''Used'' means utilized or consumed in the production of goods; and

(y) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.914 Originating goods.

Except as otherwise provided in this subpart and General Note 32(m), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the PTPA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 32(n), HTSUS, and the good satisfies all other applicable requirements of General Note 32, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 32(n), HTSUS, and satisfies all other applicable requirements of General Note 32, HTSUS; or

(c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials.

§ 10.915 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 32(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula $RVC = ((AV - VNM)/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula $RVC = (VOM/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods.*

(1) *General.* Where General Note 32(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or any of headings 8701 through

8708, HTSUS, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles.*

(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods.* (i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (d)(4)(i)(B) of this section for automotive goods that are exported to the territory of Peru or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.916 Value of materials.

(a) *Calculating the value of materials.* Except as provided in § 10.924, for purposes of calculating the regional value content of a good under General Note 32(n), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.918 of this subpart) provisions of General Note 32(n), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Peru purchases material x from an unrelated seller in Peru for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Peru ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Peru by the seller (or by anyone else). So long as the producer acquired material x in Peru, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Peru at or about the same time the goods were sold to the producer in Peru. Thus, if the seller of material x also sold an identical material to another buyer in Peru without restrictions, that other sale

would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials.*

(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 32, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.917 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.914 of this subpart and all other applicable requirements of General Note 32, HTSUS.

§ 10.918 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 32(n), HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 32(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 32, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; and

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS; and

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(6) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(7) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; and

(8) Except as provided in paragraphs (b)(1) through (b)(7) of this section and General Note 32(n), HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods.* (1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 32(n), HTSUS, will nevertheless be considered to be an originating good if:

(i) The total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel

good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of one or both of the Parties. For purposes of this paragraph, ''wholly formed'' means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of one or both of the Parties.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

§ 10.919 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.920 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 32(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they are specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.915 of this subpart.

§ 10.921 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 32(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.922 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the PTPA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 32(n), HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Peruvian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.916(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* § 10.915(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.915(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.923 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.913(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 32(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in § 10.913(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Peruvian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Peru. The shipping container is originating. The value of the shipping container determined under section § 10.916(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.915(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require

a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.924 Indirect materials.

An indirect material, as defined in § 10.902(m) of this subpart, will be considered to be an originating material without regard to where it is produced.

Example. Peruvian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.914(b)(1) of this subpart and General Note 32(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.925 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under § 10.914 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

Origin Verifications and Determinations

§ 10.926 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 10.903(b) or § 10.911 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under PTPA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Peru, to review the records of the type referred to in § 10.909(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.927 Special rule for verifications in Peru of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate.* (1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the Government of Peru conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States.* (1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of Peru conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if

CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

(d) *Assistance by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Peru, along with the competent authorities of Peru, to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from Peru to the United States.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.928 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 32, HTSUS, and in §§ 10.913 through 10.925 of this subpart, the legal basis for the determination.

§ 10.929 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the PTPA rules of origin set forth in General Note 32, HTSUS, CBP may suspend preferential tariff treatment under the PTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 32, HTSUS.

Penalties

§ 10.930 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the PTPA.

§ 10.931 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.903(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.932 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.909(b) with respect to the making of an incorrect certification.

§ 10.933 Framework for correcting claims or certifications.

(a) *''Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims.* (1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of Appendix B to Part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

Goods Returned After Repair or Alteration

§ 10.934 Goods re-entered after repair or alteration in Peru.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Peru as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Peru, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Peru, are incomplete for their intended use and for which the processing operation performed in Peru constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Peru after having been exported for repairs or alterations and which are claimed to be duty free.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 4. The general authority citation for part 24 and specific authority for § 24.23 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

■ 5. Section 24.23 is amended by adding paragraph (c)(11) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(11) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 203 of the United States-Peru Trade Promotion Agreement Implementation Act (*see also* General Note 32, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after February 1, 2009.

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 6. The authority citation for Part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

■ 7. Section 162.0 is amended by revising the last sentence to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the Dominican Republic-Central America-U.S. Free Trade Agreement, the U.S.-Morocco Free Trade Agreement, and the U.S.-Peru Trade Promotion Agreement are contained in Part 10, Subparts H, I, J, M, and Q of this chapter, respectively.

PART 163—RECORDKEEPING

■ 8. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 9. Section 163.1(a)(2) is amended by redesignating paragraph (a)(2)(xiii) as paragraph (a)(2)(xiv) and adding a new paragraph (a)(2)(xiii) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(xiii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Peru Trade Promotion Agreement (PTPA), including a PTPA importer's certification.

* * * * *

■ 10. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 10.905 PTPA records that the importer may have in support of a PTPA claim for preferential tariff treatment, including an importer's certification.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 11. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 12. Section 178.2 is amended by adding new listings for ''§§ 10.903 and 10.904'' to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
* * * * * * *		
§§ 10.903 and 10.904	Claim for preferential tariff treatment under the U.S.-Peru Trade Promotion Agreement.	1651–0117
* * * * * * *		

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

Approved: October 28, 2011.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2011–28471 Filed 11–2–11; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1980

[Docket Number: OSHA–2011–0126]

RIN 1218–AC53

Procedures for the Handling of Retaliation Complaints Under Section 806 of the Sarbanes-Oxley Act of 2002, as Amended

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim Final Rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending the regulations governing employee protection (''retaliation'' or ''whistleblower'') claims under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'' or ''Act''), which was amended by sections 922 and 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, enacted on July 21, 2010. Public Law 111–203. These revisions to the Sarbanes-Oxley whistleblower regulations clarify and improve the procedures for handling Sarbanes-Oxley whistleblower complaints and implement statutory changes enacted into law as part of the 2010 statutory amendments. These changes to the Sarbanes-Oxley whistleblower regulations also make the procedures for handling retaliation complaints under Sarbanes-Oxley more consistent with OSHA's procedures for handling complaints under the employee protection provisions of the Surface Transportation Assistance Act of 1982, 29 CFR part 1978; the National Transit Systems Security Act and the Federal Railroad Safety Act, 29 CFR part 1982; the Consumer Product Safety Improvement Act of 2008, 29 CFR part 1983; and the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as amended, 29 CFR part 24.

DATES: This interim final rule is effective on November 3, 2011. Comments and additional materials must be submitted (post-marked, sent or received) by January 3, 2012.

ADDRESSES: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0126, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2011–0126). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Sandra Dillon, Acting Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. This **Federal Register** publication is available in alternative formats. The alternative formats are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, (Dodd-Frank) amended the Sarbanes-Oxley whistleblower provision, 18 U.S.C. 1514A. The regulatory revisions described herein reflect these statutory amendments and also seek to clarify and improve OSHA's procedures for handling Sarbanes-Oxley whistleblower claims. To the extent possible within the bounds of applicable statutory language, these revised regulations are designed to be consistent with the procedures applied to claims under other whistleblower statutes administered by OSHA, including the Surface Transportation Assistance Act of 1982 (STAA), 29 CFR part 1978; the National Transit Systems Security Act (NTSSA) and the Federal Railroad Safety Act (FRSA), 29 CFR part 1982; the Consumer Product Safety Improvement Act of 2008 (CPSIA), 29 CFR part 1983; and the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as amended, 29 CFR part 24.

Responsibility for receiving and investigating complaints under Sarbanes-Oxley has been delegated to the Assistant Secretary of Labor for Occupational Safety and Health (Secretary of Labor's Order No. 4–2010 (Sept. 2, 2010), 75 FR 55355 (Sept. 10, 2010)). Hearings on determinations by the Assistant Secretary are conducted by

the Office of Administrative Law Judges, and appeals from decisions by administrative law judges (ALJs) are decided by the Administrative Review Board (ARB) (Secretary of Labor's Order No. 1–2010 (Jan. 15, 2010), 75 FR 3924 (Jan. 25, 2010)).

II. Summary of Statutory Changes to the Sarbanes-Oxley Whistleblower Provision

Dodd-Frank, enacted on July 21, 2010, amended the Sarbanes-Oxley whistleblower provision to make several substantive changes. First, section 922(b) of Dodd-Frank added protection for employees from retaliation by nationally recognized statistical rating organizations (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) or their officers, employees, contractors, subcontractors, and agents.[1] Second, section 922(c) of Dodd-Frank extended the statutory filing period for retaliation complaints under Sarbanes-Oxley from 90 to 180 days after the date on which the violation occurs or after the date on which the employee became aware of the violation. Section 922(c) of Dodd-Frank also provided parties with a right to a jury trial in district court actions brought under Sarbanes-Oxley's ''kickout'' provision, 18 U.S.C. 1514A(b)(1)(B), which provides that, if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such action without regard to the amount in controversy. Third, section 922(c) amended Sarbanes-Oxley to state that the rights and remedies provided for in 18 U.S.C. 1514A may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement, and to provide that no predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

In addition, section 929A of Dodd-Frank clarified that companies covered by the Sarbanes-Oxley whistleblower provision include any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(d)) including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company. As explained in *Johnson* v. *Siemens Technologies, Inc.,* ARB No. 08–032, 2011 WL 1247202, at *11 (Mar. 31, 2011), section 929A merely clarified that subsidiaries and affiliates are covered under the Sarbanes-Oxley whistleblower provision. Section 929A applies to all cases currently pending before the Secretary.

Dodd-Frank left the remaining requirements of the Sarbanes-Oxley whistleblower provision unchanged. Sarbanes-Oxley continues to provide that proceedings under the Act will be governed by the rules and procedures and burdens of proof of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), 49 U.S.C. 42121(b). Sarbanes-Oxley continues to authorize an award to a prevailing employee of make-whole relief, including reinstatement with the same seniority status that the employee would have had but for the retaliation, back pay with interest, and compensation for any special damages sustained, including litigation costs, expert witness fees and reasonable attorney's fees. *See* 18 U.S.C. 1514A(c)(2).

III. Summary and Discussion of Regulatory Provisions

The regulatory provisions in this part are being revised to reflect the 2010 Dodd-Frank statutory amendments, to improve the procedures for handling Sarbanes-Oxley whistleblower cases, and to make the Sarbanes-Oxley whistleblower regulations more consistent with the regulations that OSHA has promulgated for the administration of other whistleblower programs to the extent possible within the bounds of the applicable statutory language.

These regulatory revisions make several non-substantive changes in terminology. First, cases under the whistleblower provision of Sarbanes-Oxley will now be referred to as actions alleging ''retaliation'' rather than ''discrimination.'' This change is not intended to have substantive effect. It simply reflects the fact that claims brought under the whistleblower provisions are prototypical retaliation claims. A retaliation claim is a specific type of discrimination claim that focuses on the actions taken as a result of an employee's protected activity rather than as a result of an employee's characteristics (*e.g.,* race, gender, or religion).

Second, these rules previously referred to persons named in Sarbanes-Oxley whistleblower complaints as ''named persons,'' but in the revised regulations they will be referred to as ''respondents.'' Third, rather than referring to an employer's ''unfavorable personnel action,'' these revisions use the term ''adverse action.'' Again, these changes are not intended to have any substantive impact on the handling of Sarbanes-Oxley whistleblower cases. The revisions simply reflect a preference for more conventional terminology. These updated terms are already used in OSHA's procedural rules for handling whistleblower complaints under several other statutes, including STAA, 29 CFR part 1978; NTSSA and FRSA, 29 CFR part 1982; CPSIA, 29 CFR part 1983; and the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as amended, 29 CFR part 24. The minor changes here create consistency with these other programs and reduce possible confusion.

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Section 1980.100 Purpose and Scope

This section describes the purpose of the regulations implementing Sarbanes-Oxley and provides an overview of the procedures covered by these regulations. This section has been revised to reflect the 2010 statutory amendments to Sarbanes-Oxley.

Section 1980.101 Definitions

This section includes general definitions applicable to Sarbanes-Oxley's whistleblower provision. The definition of the term ''Act'' has been revised to incorporate the 2010 Dodd-Frank statutory amendments within that definition. Also, consistent with the recently promulgated interim final rules under STAA, 29 CFR part 1978; NTSSA and FRSA, 29 CFR part 1982; and CPSIA, 29 CFR part 1983, a new definition of ''business days'' is being

[1] Section 3(a) of the Securities Exchange Act of 1934 defines nationally recognized statistical rating organization as a credit rating agency that—

(1) issues credit ratings certified by qualified institutional buyers, in accordance with 15 U.S.C. 78*o*–7(a)(1)(B)(ix), with respect to—

(i) financial institutions, brokers, or dealers;

(ii) insurance companies;

(iii) corporate issuers;

(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on September 29, 2006);

(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

(2) is registered under 15 U.S.C. 78*o*–7.

15 U.S.C. 78c(a)(62).

added at paragraph 1980.101(c) of these rules to clarify that the term means days other than Saturdays, Sundays and Federal holidays.

The 2010 statutory amendments to Sarbanes-Oxley define ''nationally recognized statistical rating organization'' by reference to the definition in the Securities Exchange Act of 1934, codified at 15 U.S.C. 78c(a)(62), and that definition has been included here. Similarly, the definition of ''company'' has been revised to reflect that ''company'' under the Sarbanes-Oxley whistleblower provision includes any subsidiary or affiliate whose financial information is included in the consolidated financial statements of a company. Thus under these regulations ''company'' means any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(d)) including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company.

These regulatory revisions also replace the term ''company representative'' with the term ''covered person,'' which is defined in subparagraph 1980.101(f) as ''any company, including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or any nationally recognized statistical rating organization, or any officer, employee, contractor, subcontractor, or agent of such company or nationally recognized statistical rating organization.'' In addition, as noted above, these rules have replaced the definition of ''named person'' with a definition for ''respondent'' at paragraph 1980.101(k), and define the term ''respondent'' as ''the person named in the complaint who is alleged to have violated the Act.'' The term ''employee'' in 1980.101(g) has also been revised consistent with these changes, and the term ''person'' in 1980.101(j) has been revised to explicitly include ''companies'' in the definition of ''person.'' The order of the terms in this section has been changed as necessary to permit the inclusion and substitution of the terms described above. These changes in terminology were needed to reflect the addition of nationally recognized statistical rating organizations and their officers, employees, contractors, subcontractors, and agents to the list of potential respondents in whistleblower cases under Sarbanes-Oxley. These changes in terminology also continue to reflect that Sarbanes-Oxley's statutory provisions identify individuals, as well as the employer, as potentially liable for retaliation. OSHA continues to anticipate, however, that in most cases the covered person and the respondent likely will be the complainant's employer. The definitions in this section also continue to reflect OSHA's longstanding position that the statute protects both employees of publicly traded companies and employees of contractors, subcontractors, and agents of publicly traded companies. *See* Procedures for the Handling of Discrimination Complaints under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, Final Rule, 69 FR 52104, 52106 (Aug. 24, 2004); Brief for the Secretary of Labor as Amicus Curiae in Support of Plaintiff-Appellees, *Lawson* v. *FMR, LLC,* No. 10–2240 (1st Cir. 2011).

Section 1980.102 Obligations and Prohibited Acts

This section describes the activities that are protected under Sarbanes-Oxley and the conduct that is prohibited in response to any protected activities. The term ''covered person'' has been substituted for ''company or company representative'' throughout this section, and other minor changes have been made to make this section consistent with OSHA's procedural rules implementing other whistleblower provisions. It should be noted that it is the Department's longstanding position that complaints to an individual member of Congress under this section are protected. The individual member need not be conducting an investigation or on a Committee conducting an investigation. The critical focus is on whether the employee reported conduct that he or she reasonably believed constituted a violation of one of the enumerated laws or regulations.

Section 1980.103 Filing of Retaliation Complaints

This section explains the requirement for filing a retaliation complaint under Sarbanes-Oxley. The terminology used in this section has been revised to reflect the updated terminology described above. The 2010 statutory amendments changed the statute of limitations for complaints under the Act from 90 to 180 days. Now, to be timely, a complaint must be filed within 180 days of when the alleged violation occurs, or after the date on which the employee became aware of the violation. This section of the regulations has been updated to reflect that statutory change. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), the time of the alleged violation is considered to be when the retaliatory decision has been both made and communicated to the complainant.

Additionally, section 1980.103(b) has been amended to change the requirement that whistleblower complaints to OSHA under Sarbanes-Oxley ''must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.'' Consistent with OSHA's procedural rules under other whistleblower statutes, complaints filed under Sarbanes-Oxley need not be in any particular form. They may be either oral or in writing. When a complaint is made orally, OSHA will reduce the complaint to writing. If a complainant is not able to file the complaint in English, the complaint may be filed in any language. With the consent of the employee, complaints may be filed by any person on the employee's behalf.

These changes are consistent with decisions of the ARB, which have permitted oral complaints under the environmental statutes. *See, e.g., Roberts* v. *Rivas Environmental Consultants, Inc.,* 1996–CER–1, 1997 WL 578330, at *3 n.6 (ARB Sept. 17, 1997) (complainant's oral statement to an OSHA investigator, and the subsequent preparation of an internal memorandum by that investigator summarizing the oral complaint, satisfies the ''in writing'' requirement of CERCLA, 42 U.S.C. 9610(b), and the Department's accompanying regulations in 29 CFR part 24); *Dartey* v. *Zack Co. of Chicago,* No. 1982–ERA–2, 1983 WL 189787, at *3 n.1 (Sec'y of Labor Apr. 25, 1983) (adopting administrative law judge's findings that complainant's filing of a complaint to the wrong DOL office did not render the filing invalid and that the agency's memorandum of the complaint satisfied the ''in writing'' requirement of the Energy Reorganization Act (''ERA'') and the Department's accompanying regulations in 29 CFR part 24). Moreover, these changes are consistent with OSHA's longstanding practice of accepting oral complaints filed under Section 11(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 660(c); Section 211 of the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651; Section 7 of the International Safe Container Act of 1977, 46 U.S.C. 80507; and STAA, 49 U.S.C. 31105. This change also accords with the Supreme Court's decision in *Kasten* v. *Saint-Gobain Performance Plastics Corp.,* in which the Court held that the anti-

retaliation provision of the Fair Labor Standards Act, which prohibits employers from discharging or otherwise discriminating against an employee because such employee has ''filed any complaint,'' protects employees' oral complaints of violations of the Fair Labor Standards Act. 563 U.S. __, 131 S.Ct. 1325 (2011).

OSHA believes that the changes in this section complement the ARB's decision in *Sylvester* v. *Parexel International, LLC.* Noting that OSHA does not require complaints under Sarbanes-Oxley to be in any form and that under 29 CFR 1980.104(b) OSHA has a duty, if appropriate, to interview the complainant to supplement the complaint, the ARB held that the Federal court pleading standards established in *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007) and *Ashcroft* v. *Iqbal,* 556 U.S. __, 129 S.Ct. 1937 (2009) do not apply to Sarbanes-Oxley whistleblower complaints filed with OSHA. *Sylvester* v. *Parexel Int'l, Inc.,* ARB Case No. 07–123, 2011 WL 2165854, at *9–10 (ARB May 26, 2011).

Section 1980.104 Investigation

This section describes the procedures that apply to the investigation of Sarbanes-Oxley complaints. The terminology used in this section has been updated and the content of each paragraph has been reorganized to be consistent with OSHA's investigation procedures under other whistleblower statutes, to the extent such parallel procedures are consistent with the Act.

Paragraph (a) of this section outlines the procedures for notifying the parties and the Securities and Exchange Commission of the complaint and notifying respondents of their rights under these regulations. Paragraph (a) also provides that the respondent will receive a copy of the complaint, redacted if necessary in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. Former paragraphs (b) through (d) described the statutory burdens of proof applicable to Sarbanes-Oxley whistleblower complaints. The discussion of these burdens has been consolidated without substantive change in a single paragraph 1980.104(e), consistent with the approach taken in OSHA's procedural rules under other whistleblower statutes. Paragraph (b) now describes the procedures for the respondent to submit its response to the complaint, which were formerly contained in 1980.104(c). Paragraph (c) now addresses disclosure to the complainant of respondent's submissions to the agency that are responsive to the complaint. The revised paragraph (c) newly specifies that throughout the investigation the agency will provide to the complainant (or the complainant's legal counsel if the complainant is represented by counsel) a copy of all of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint, and the complainant will have an opportunity to respond to those submissions. Before providing such materials to the complainant, the agency will redact them in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The agency expects that sharing information with complainants in accordance with this new provision will enhance OSHA's ability to conduct full and fair investigations and permit the Assistant Secretary to more thoroughly assess defenses raised by respondents. Paragraph (d) of this section discusses confidentiality of information provided during investigations. Paragraph (f), formerly 1980.104(e), describes the procedures the Assistant Secretary will follow prior to the issuance of findings and a preliminary order when the Assistant Secretary has reasonable cause to believe that a violation has occurred. This paragraph has been amended to provide that the complainant will be sent a copy of the materials that OSHA must send to the respondent before OSHA issues a preliminary order of reinstatement should the agency have reasonable cause to believe that such an order is appropriate. Before providing such materials to the complainant, the agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws.

As noted above, former paragraphs (b) through (d), which describe the statutory burdens of proof applicable to Sarbanes-Oxley complaints, have been consolidated in paragraph (e). The Sarbanes-Oxley whistleblower provision mandates that an action under the Act is governed by the burdens of proof set forth in AIR21, 49 U.S.C. 42121(b). The statute requires that a complainant make an initial *prima facie* showing that protected activity was ''a contributing factor'' in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing. Complainant's burden may be satisfied, for example, if he or she shows that the adverse action took place shortly after protected activity, giving rise to the inference that it was a contributing factor in the adverse action.

If the complainant does not make the *prima facie* showing, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the ERA, which is the same as that under Sarbanes-Oxley, serves a ''gatekeeping function'' that ''stem[s] frivolous complaints''). Even in cases where the complainant successfully makes a *prima facie* showing, the investigation must be discontinued if the employer ''demonstrates, by clear and convincing evidence,'' that it would have taken the same adverse action in the absence of the protected activity. 49 U.S.C. 42121(b)(2)(B)(ii). Thus, OSHA must dismiss a complaint under Sarbanes-Oxley and not investigate (or cease investigating) if either: (1) The complainant fails to meet the *prima facie* showing that protected activity was a contributing factor in the adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the statutory burdens of proof require an employee to prove that the alleged protected activity was a ''contributing factor'' to the alleged adverse action. If the employee proves that the alleged protected activity was a contributing factor to the adverse action, the employer, to escape liability, must prove by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. A contributing factor is ''any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.'' *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)). In proving that protected activity was a contributing factor in the adverse action, ''a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail,'' because a complainant alternatively can prevail by showing that the respondent's ''reason, while true, is only one of the reasons for its conduct,'' and that another reason was the complainant's protected activity. *See Klopfenstein* v. *PCC Flow Techs.*

Holdings, Inc., ARB No. 04–149, 2006 WL 3246904, at *13 (ARB May 31, 2006) (citing *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)) (discussing contributing factor test under the Sarbanes-Oxley whistleblower provision), *aff'd sub nom. Klopfenstein* v. *Admin. Review Bd., U.S. Dep't of Labor,* 402 F. App'x 936, 2010 WL 4746668 (5th Cir. 2010).

Sarbanes-Oxley's burdens of proof do not address the evidentiary standard that applies to a complainant's proof that protected activity was a contributing factor in an adverse action. Sarbanes-Oxley simply provides that the Secretary may find a violation only ''if the complainant demonstrates'' that protected activity was a contributing factor in the alleged adverse action. *See* 49 U.S.C. 42121(b)(2)(B)(iii). It is the Secretary's position that the complainant must prove by a ''preponderance of the evidence'' that his or her protected activity contributed to the adverse action; otherwise the burden never shifts to the employer to establish its defense by ''clear and convincing evidence.'' *See, e.g., Allen* v. *Admin. Review Bd.,* 514 F.3d 468, 475 n.1 (5th Cir. 2008) (''The term 'demonstrate' [under 42121(b)(2)(B)(iii)] means to prove by a preponderance of the evidence.''). Once the complainant establishes that the protected activity was a contributing factor in the adverse action, the employer can escape liability only by proving by clear and convincing evidence that it would have reached the same decision even in the absence of the prohibited rationale. The ''clear and convincing evidence'' standard is a higher burden of proof than a ''preponderance of the evidence'' standard.

Section 1980.105 Issuance of Findings and Preliminary Orders

As provided in the previous procedures for handling retaliation complaints under Sarbanes-Oxley, this section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, written findings regarding whether or not there is reasonable cause to believe that the complaint has merit. If the findings are that there is reasonable cause to believe that the complaint has merit, in accordance with the statute, 18 U.S.C. 1514A(c), the Assistant Secretary will order ''all relief necessary to make the employee whole,'' including preliminary reinstatement; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees.

In ordering interest on back pay under Sarbanes-Oxley, the Secretary has determined that, instead of computing the interest due by compounding quarterly the Internal Revenue Service (''IRS'') interest rate for the underpayment of taxes, which under 26 U.S.C. 6621 is generally the Federal short-term rate plus three percentage points, the Secretary will instead compound such interest daily. This is a change from the way interest has been calculated. *See Doyle* v. *Hydro Nuclear Services,* ARB Nos. 99–041, 99–042, and 99–012, 2000 WL 694384, at *15–16 (ARB May 17, 2000). The Secretary believes that daily compounding of interest better achieves the make-whole purpose of a back pay award. Daily compounding of interest has become the norm in private lending and recently was found to be the most appropriate method of calculating interest on back pay by the National Labor Relations Board. *See Jackson Hospital Corp.* v. *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL–CIO–CLC,* 356 NLRB No. 8, 2010 WL 4318371, at *3–4 (Oct. 22, 2010). Additionally, interest on tax underpayments under the Internal Revenue Code, 26 U.S.C. 6621, is compounded daily pursuant to 26 U.S.C. 6622(a).

As in the previous procedures for handling retaliation complaints under Sarbanes-Oxley, the findings and, where appropriate, preliminary order, advise the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing. The findings and, where appropriate, preliminary order, also advise the respondent of the right to request attorney's fees not exceeding $1,000 regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final decision and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

Finally, the statement that reinstatement would not be appropriate where the respondent establishes that the complainant is a security risk has been removed from 1980.105(a)(1). OSHA believes that the determination of whether reinstatement is inappropriate in a given case is best made on the basis of the facts of each case and the relevant case law, and thus it is not necessary in these procedural rules to define the circumstances in which reinstatement is not a proper remedy. This amendment also makes these procedural regulations consistent with the recent interim final rules under STAA, NTSSA, FRSA, and CPSIA, which do not contain this statement.

In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he received prior to his termination, but not actually return to work. Such ''economic reinstatement'' is akin to an order of front pay and is frequently employed in cases arising under Section 105(c) of the Federal Mine Safety and Health Act of 1977. *See, e.g., Sec'y of Labor on behalf of York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (June 26, 2001). Front pay has been recognized as a possible remedy in cases under Sarbanes-Oxley and other whistleblower statutes enforced by OSHA in circumstances where reinstatement would not be appropriate. *Hagman* v. *Washington Mutual Bank, Inc.,* 2005–SOX–73, 2006 WL 6105301, *32 (Dec. 19, 2006) (noting that while reinstatement is the ''preferred and presumptive remedy'' under Sarbanes-Oxley, ''[f]ront pay may be awarded as a substitute when reinstatement is inappropriate due to: (1) An employee's medical condition that is causally related to her employer's retaliatory action * * *; (2) manifest hostility between the parties * * *; (3) the fact that claimant's former position no longer exists * * *; or (4) the fact that employer is no longer in business at the time of the decision''); *see, e.g., Hobby* v. *Georgia Power Co.,* ARB No. 98–166, ALJ No. 1990–ERA–30 (ARB Feb. 9, 2001), *aff'd sub nom. Hobby* v. *U.S. Dept. of Labor,* No. 01–10916 (11th Cir. Sept. 30, 2002) (unpublished) (noting circumstances where front pay may be available in lieu of reinstatement but ordering reinstatement); *Brown* v. *Lockheed Martin Corp.,* 2008–SOX–49, 2010 WL 2054426, at *55–56 (Jan. 15, 2010) (same). Congress intended that employees be preliminarily reinstated to their positions if OSHA finds reasonable cause to believe that they were discharged in violation of Sarbanes-Oxley. When a violation is found, the norm is for OSHA to order immediate preliminary reinstatement. An employer does not have a statutory right to choose economic reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's

satisfaction that reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the employee. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the employee continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating an employee should the employer ultimately prevail in the whistleblower adjudication.

Subpart B—Litigation

Section 1980.106 Objections to the Findings and the Preliminary Order and Request for a Hearing

As under the prior procedures for whistleblower complaints under Sarbanes-Oxley, to be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or email communication is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections also is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record, as well as the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* ARB No. 04–101, 2005 WL 2865915, at *7 (ARB Oct. 31, 2005). Paragraph (b) has been revised to note that a respondent's motion to stay OSHA's preliminary order of reinstatement will be granted only based on exceptional circumstances. This revision clarifies that a stay is only available in ''exceptional circumstances,'' because the Secretary believes that a stay of the Assistant Secretary's preliminary order of reinstatement under Sarbanes-Oxley would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public favors a stay.

Section 1980.107 Hearings

As under the prior procedures for whistleblower complaints under Sarbanes-Oxley, this section adopts the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 subpart A. It specifically allows hearings to be consolidated if both the complainant and respondent object to the findings and/or order of the Assistant Secretary. This section continues to provide that the hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo,* on the record. Administrative law judges continue to have broad discretion to limit discovery where necessary to expedite the hearing. As under the prior procedures, formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious. Minor revisions have been made throughout this section to update the terminology used.

Section 1980.108 Role of Federal Agencies

As noted in this section, 1980.108(a)(1) previously, the Assistant Secretary, at his or her discretion, may participate as a party or *amicus curiae* at any time in the administrative proceedings under Sarbanes-Oxley. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ; petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as *amicus curiae* before the ALJ or in the ARB proceeding. Although OSHA anticipates that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations that appear egregious, or where the interests of justice might require participation by the Assistant Secretary.

Consistent with OSHA's procedural rules under other whistleblower statutes, paragraph (a)(2) has been amended to require the parties to send all documents to each other, in addition to the Assistant Secretary.

Paragraph (b) has been revised to state that ''The Securities and Exchange Commission, if interested in a proceeding, may participate as *amicus curiae* at any time in the proceeding, at the Commission's discretion.'' This revision makes this provision consistent with the analogous provisions in the Secretary's procedural rules under other whistleblower statutes. However, the revision is not intended to materially change the circumstances in which the Securities and Exchange Commission may participate in proceedings under Sarbanes-Oxley. The Securities and Exchange Commission may participate as *amicus curiae* at any time in the proceedings.

Section 1980.109 Decision and Orders of the Administrative Law Judge

Revisions have been made to this section to make it consistent with OSHA's procedural rules for handling complaints under other whistleblower statutes. This section sets forth the requirements for the content of the decision and order of the ALJ, and includes the standard for finding a violation under Sarbanes-Oxley. Former paragraph (a) has been divided into three paragraphs—(a), (b) and (c). Paragraph (a) now states that a determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint. Paragraph (b) now explains that if the complainant has satisfied this burden, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity. A full discussion of the burdens of proof used by the Department of Labor to resolve whistleblower cases under this part is presented above in the discussion of section 1980.104. Paragraph (c) now provides that the Assistant Secretary's determination to dismiss the complaint without an investigation or without a complete investigation pursuant to section 1980.104 is not subject to review. Thus, paragraph (c) of section 1980.109 clarifies that the Assistant Secretary's determinations on whether to proceed with an investigation under Sarbanes-Oxley and whether to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears cases *de novo* and, therefore, as a general

matter, may not remand cases to the Assistant Secretary to conduct an investigation or make further factual findings. Paragraph (c) now also clarifies that the ALJ can dispose of a matter without a hearing if the facts and circumstances warrant. The provisions formerly contained in paragraph (b) have been moved to new paragraphs (d)(1) and (2). Paragraph (d)(1) additionally provides that interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The provisions formerly contained in paragraph (c) have been moved to new paragraph (e), which also requires that the ALJ's decision be served on the Assistant Secretary and the Associate Solicitor of the Division of Fair Labor Standards.

Section 1980.110 Decision of the Administrative Review Board

As in section 1980.110(a) previously, upon the issuance of the ALJ's decision, the parties have 10 business days within which to petition the ARB for review of that decision. Subsection (b) has been revised to clarify that if no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review. The date of the postmark, facsimile transmittal, or email communication is considered the date of filing of the petition; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt.

The appeal provisions in this part provide that an appeal to the ARB is not a matter of right but is accepted at the discretion of the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If a timely petition for review is filed with the ARB, any relief ordered by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. When the ARB accepts a petition for review, the ALJ's factual determinations will be reviewed under the substantial evidence standard.

This section also provides that based on exceptional circumstances, the ARB may grant a motion to stay an ALJ's preliminary order of reinstatement under Sarbanes-Oxley, which otherwise would be effective, while review is conducted by the ARB. Subsection (b) has been amended to clarify that a stay is only available in ''exceptional circumstances,'' because the Secretary believes that a stay of an ALJ's preliminary order of reinstatement under Sarbanes-Oxley would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public favors a stay.

Finally, paragraph (d) has been revised to provide that interest on back pay ordered under this section will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

Subpart C—Miscellaneous Provisions

Section 1980.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, and the withdrawal of objections to findings and/or orders. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Paragraph (a) has been revised to allow the complainant to notify the Assistant Secretary of his withdrawal orally or in writing. Minor revisions also have been made to this section to make it consistent with the procedural rules under other whistleblower statutes. These minor revisions do not reflect substantive changes in the requirements for withdrawals of complaints, objections or petitions for review, or substantive changes in the requirements for submission and Departmental approval of settlement agreements. Rather, these amendments simply incorporate the procedures that the Department has been using under Sarbanes-Oxley. Paragraph (a) now notes that complainant may not withdraw a complaint after filing objections to an ALJ's order. Paragraph (d)(1) now notes that the Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates his or her consent and achieves the consent of all three parties.

Section 1980.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought that the ARB submit the record of proceedings to the appropriate court pursuant to the rules of such court. The section has been renumbered for clarity and consistency with OSHA's other whistleblower protection regulations. Paragraph (c) has been revised to clarify that ''rules of the court'' refers to the Federal Rules of Appellate Procedure and local rules of the relevant Federal court of appeals.

Section 1980.113 Judicial Enforcement

This section describes the Secretary's power under Sarbanes-Oxley to obtain judicial enforcement of orders and the terms of a settlement agreement. It has been amended for consistency with OSHA's other whistleblower programs and clarifies that Federal district courts have authority to grant all appropriate relief in an action to enforce a preliminary order of reinstatement or a final order of the Secretary, including a final order approving a settlement agreement.

While some courts have declined to enforce preliminary orders of reinstatement under Sarbanes-Oxley, the Secretary's consistent position has been that such orders are enforceable in Federal district court. *See Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602 (6th Cir. 2010) (order granting stay of preliminary injunction); *Bechtel* v. *Competitive Technologies, Inc.,* 448 F.3d 469 (2d Cir. 2006); *Welch* v. *Cardinal Bankshares Corp.,* 454 F. Supp. 2d 552 (W.D. Va. 2006) (decision vacated, appeal dismissed, No. 06–2295 (4th Cir. Feb. 20, 2008)).

By incorporating the procedures of AIR21, Sarbanes-Oxley authorizes district courts to enforce orders, including preliminary orders of reinstatement, issued by the Secretary under the Act. *See* 18 U.S.C. 1514A(b)(2)(A) (adopting the rules and procedures set forth in AIR21, 49 U.S.C. 42121(b)). The Secretary consistently has interpreted Sarbanes-Oxley to permit her to obtain civil enforcement of preliminary orders of reinstatement. *See* Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602 (6th Cir. 2010); Brief for the Intervenor/Plaintiff-Appellant United States of America, *Welch* v. *Cardinal Bankshares Corp.,* No. 06–2295 (4th Cir. Feb. 20, 2008); Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Bechtel* v. *Competitive Technologies, Inc.,* 448 F.3d 469 (2d Cir. 2006) (No. 05–2402).

Under 49 U.S.C. 42121(b), which provides the procedures applicable to investigations of whistleblower complaints under Sarbanes-Oxley, the

Secretary must investigate complaints under the Act and determine whether there is reasonable cause to believe that a violation has occurred. ''[I]f the Secretary of Labor concludes that there is a reasonable cause to believe that a violation * * * has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B),'' which includes reinstatement of the complainant to his or her former position. 49 U.S.C. 42121(b)(2)(A) and (b)(3)(B)(ii). The respondent may file objections to the Secretary's preliminary order and request a hearing. However, the filing of such objections ''shall not operate to stay any reinstatement remedy contained in the preliminary order.'' 49 U.S.C. 42121(b)(2)(A).

Paragraph (5) of 49 U.S.C. 42121(b) provides for judicial enforcement of the Secretary's orders, including preliminary orders of reinstatement. That paragraph states ''[w]henever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.'' 49 U.S.C. 42121(b)(5). Preliminary orders that contain the relief of reinstatement prescribed by paragraph (3)(B) are judicially enforceable orders, issued under paragraph (3). Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602 at 23–25 (6th Cir. 2010).

This analysis is not altered by the fact that paragraph (3) bears the heading ''Final Order.'' *See United States* v. *Buculei,* 262 F.3d 322, 331 (4th Cir. 2001) (a statute's title cannot limit the plain meaning of its text), *cert. denied,* 535 U.S. 962 (2002). Focusing on the title to subsection (b)(3) instead of reading section 42121(b) as a coherent whole negates the congressional directives that preliminary reinstatement must be ordered upon a finding of reasonable cause and that such orders not be stayed pending appeal.

Sections of a statute should not be read in isolation, but rather in conjunction with the provisions of the entire Act, considering both the object and policy of the Act. *See, e.g., Brown & Williamson Tobacco Corp.* v. *FDA,* 153 F.3d 155, 162 (4th Cir. 1998), *aff'd,* 529 U.S. 120 (2000). 49 U.S.C. 42121(b)(2)(A)'s clear statement that objections shall not stay any preliminary order of reinstatement demonstrates Congress's intent that the Secretary's preliminary orders of reinstatement be immediately effective. Reading 49 U.S.C. 42121(b)(5) to allow enforcement of such orders is the only way to effectuate this intent.

The Secretary's interpretation is buttressed by the legislative history of Sarbanes-Oxley and AIR21. Before Congress enacted Sarbanes-Oxley, the Department of Labor had interpreted this AIR21 provision to permit judicial enforcement of preliminary reinstatement orders. Accordingly, Congress is presumed to have been aware of the Department's interpretation of 49 U.S.C. 42121(b)(5) and to have adopted that interpretation when it incorporated that provision by reference. *See Lorillard* v. *Pons,* 434 U.S. 575, 580–81 (1978) (''[W]here * * * Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute''). The Secretary's interpretation is further supported by the legislative history of AIR21, which makes clear that Congress regarded preliminary reinstatement as crucial to the protections provided in the statute. Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602, at 41–44 (6th Cir. 2010) (reviewing legislative history of AIR21). Interpreting 49 U.S.C. 42121(b)(5) to permit judicial enforcement of the Secretary's preliminary orders of reinstatement is necessary to carry out Congress' clearly expressed intent that whistleblowers be immediately reinstated upon the Secretary's finding of reasonable cause to believe that retaliation has occurred.

Sarbanes-Oxley also permits the person on whose behalf the order was issued under Sarbanes-Oxley to obtain judicial enforcement of orders and the terms of a settlement agreement. 18 U.S.C. 1514A(b)(2)(A) incorporating 49 U.S.C. 42121(b)(6).

Section 1980.114 District Court Jurisdiction of Retaliation Complaints

This section sets forth Sarbanes-Oxley's provisions allowing a complainant to bring an original *de novo* action in district court, alleging the same allegations contained in the complaint filed with OSHA, if there has been no final decision of the Secretary within 180 days of the filing of the complaint. This section has been amended to reflect the 2010 statutory amendments which afford parties bringing cases under 18 U.S.C. 1514A(b)(1)(B) the right to a trial by jury.

This section also has been amended to require complainants to provide file-stamped copies of their complaint within seven days after filing a complaint in district court to the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending. A copy of the complaint also must be provided to the Regional Administrator, the Assistant Secretary, Occupational Safety and Health Administration, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. This provision is necessary to notify the agency that the complainant has opted to file a complaint in district court. This provision is not a substitute for the complainant's compliance with the requirements for service of process of the district court complaint contained in the Federal Rules of Civil Procedure and the local rules of the district court where the complaint is filed.

It is the Secretary's position that complainants may not initiate an action in Federal court after the Secretary issues a final decision, even if the date of the final decision is more than 180 days after the filing of the complaint. The purpose of the ''kick-out'' provision is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals.

Section 1980.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and notice to the parties, waive any rule as justice or the administration of Sarbanes-Oxley requires.

No substantive changes have been made to this section.

IV. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, section 1980.103) which was previously reviewed and approved for use by the Office of Management and Budget (''OMB'') and assigned OMB control number 1218–0236 under the provisions

of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

The notice and comment rulemaking procedures of Section 553 of the Administrative Procedure Act (''APA'') do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). This is a rule of agency procedure and practice within the meaning of that section. Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments are not required for these regulations, which provide the procedures for the handling of retaliation complaints. Although this is a procedural rule not subject to the notice and comment procedures of the APA, we are providing persons interested in this interim final rule 60 days to submit comments. A final rule will be published after the agency receives and reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this interim final rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866 because this rule adds new provisions and updates the language of the former regulations to implement the statutory changes made by Dodd-Frank. Executive Order 12866 requires a full economic impact analysis only for ''economically significant'' rules, which are defined in Section 3(f)(1) as rules that may have an annual effect on the economy of $100 million or more (adjusted annually for inflation), or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Because the rule is procedural in nature, it is expected to have a negligible economic impact. Therefore, no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure and practice, it is not a ''rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(3)(C)), and does not require Congressional review. Finally, this rule does not have ''federalism implications.'' The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply updates existing procedures and implements changes necessitated by enactment of Dodd-Frank. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1980

Administrative practice and procedure, Corporate fraud, Employment, Investigations, Reporting and recordkeeping requirements, Whistleblower.

Signed at Washington, DC, on October 26, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, for the reasons set out in the preamble, 29 CFR part 1980 is revised to read as follows:

PART 1980—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 806 OF THE SARBANES-OXLEY ACT OF 2002, AS AMENDED

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec:

Subpart B—Litigation

Subpart C—Miscellaneous Provisions

Authority: 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203 (July 21, 2010); Secretary of Labor's Order No. 4–2010 (Sept. 2, 2010), 75 FR 55355 (Sept. 10, 2010); Secretary of Labor's Order No. 1–2010 (Jan. 15, 2010), 75 FR 3924 (Jan. 25, 2010).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1980.100 Purpose and scope.

(a) This part implements procedures under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley or Act), enacted into law July 30, 2002, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, enacted into law July 21, 2010. Sarbanes-Oxley provides for employee protection from retaliation by companies, their subsidiaries and affiliates, officers, employees, contractors, subcontractors, and agents because the employee has engaged in protected activity pertaining to a violation or alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. Sarbanes-Oxley also provides for employee protection from retaliation by nationally recognized statistical rating organizations, their officers, employees, contractors, subcontractors or agents because the employee has engaged in protected activity.

(b) This part establishes procedures pursuant to Sarbanes-Oxley for the expeditious handling of retaliation complaints made by employees, or by persons acting on their behalf. These

rules, together with those codified at 29 CFR part 18, set forth the procedures for submission of complaints under Sarbanes-Oxley, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, withdrawals, and settlements.

§ 1980.101 Definitions.

As used in this part:

(a) *Act* means section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, July 30, 2002, codified at 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, July 21, 2010.

(b) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(c) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(d) *Company* means any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(d)) including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company.

(e) *Complainant* means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

(f) *Covered person* means any company, including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or any nationally recognized statistical rating organization, or any officer, employee, contractor, subcontractor, or agent of such company or nationally recognized statistical rating organization.

(g) *Employee* means an individual presently or formerly working for a covered person, an individual applying to work for a covered person, or an individual whose employment could be affected by a covered person.

(h) *Nationally recognized statistical rating organization* means a credit rating agency under 15 U.S.C. 78c(61) that:

(1) Issues credit ratings certified by qualified institutional buyers, in accordance with 15 U.S.C. 78*o*–7(a)(1)(B)(ix), with respect to:

(i) Financial institutions, brokers, or dealers;

(ii) Insurance companies;

(iii) Corporate issuers;

(iv) Issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on September 29, 2006);

(v) Issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) A combination of one or more categories of obligors described in any of paragraphs (h)(1)(i) through (v) of this section; and

(2) Is registered under 15 U.S.C. 78*o*–7.

(i) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(j) *Person* means one or more individuals, partnerships, associations, companies, corporations, business trusts, legal representatives or any group of persons.

(k) *Respondent* means the person named in the complaint who is alleged to have violated the Act.

(l) *Secretary* means the Secretary of Labor or persons to whom authority under the Act has been delegated.

(m) Any future statutory amendments that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1980.102 Obligations and prohibited acts.

(a) No covered person may discharge, demote, suspend, threaten, harass or in any other manner retaliate against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting or disciplining, any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, has engaged in any of the activities specified in paragraphs (b)(1) and (2) of this section.

(b) An employee is protected against retaliation (as described in paragraph (a) of this section) by a covered person for any lawful act done by the employee:

(1) To provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(i) A Federal regulatory or law enforcement agency;

(ii) Any Member of Congress or any committee of Congress; or

(ii) A person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) To file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

§ 1980.103 Filing of retaliation complaints.

(a) *Who may file.* An employee who believes that he or she has been retaliated against by a covered person in violation of the Act may file, or have filed on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) *Place of filing.* The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov*

(d) *Time for filing.* Within 180 days after an alleged violation of the Act occurs or after the date on which the employee became aware of the alleged violation of the Act, any employee who believes that he or she has been retaliated against in violation of the Act may file, or have filed on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, email communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

§ 1980.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint by providing a copy of the complaint, redacted, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws,

and will also notify the respondent of its rights under paragraphs (b) and (f) of this section and paragraph (e) of § 1980.110. The Assistant Secretary will provide a copy of the unredacted complaint to the complainant (or complainant's legal counsel, if complainant is represented by counsel) and to the Securities and Exchange Commission.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with the Assistant Secretary to present its position.

(c) Throughout the investigation, the agency will provide to the complainant (or the complainant's legal counsel if complainant is represented by counsel) a copy of all of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint. Before providing such materials to the complainant, the agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The agency will also provide the complainant with an opportunity to respond to such submissions.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e)(1) A complaint will be dismissed unless the complainant has made a *prima facie* showing that protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a *prima facie* showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected that the employee engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel, if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a *prima facie* showing, as required by this section, an investigation of the complaint shall not be conducted or will be discontinued if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in the prior paragraph, the Assistant Secretary will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1980.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the respondent (or the respondent's legal counsel, if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The complainant will also receive a copy of the materials that must be provided to the respondent under this paragraph. Before providing such materials to the complainant, the agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The respondent will be given the opportunity to submit a written response, to meet with the investigators, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the respondent can agree, if the interests of justice so require.

§ 1980.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary shall issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will include all relief necessary to make the employee whole, including reinstatement with the same seniority status that the complainant would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings, and where appropriate, the preliminary order will be sent by certified mail, return receipt requested, to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings, and where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney's fees not exceeding $1,000 from the administrative law judge (ALJ) regardless of whether the respondent has filed objections, if the complaint was frivolous or brought in bad faith. The findings, and where appropriate,

the preliminary order, also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and any preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for hearing has been timely filed as provided at § 1980.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and/or the order.

Subpart B—Litigation

§ 1980.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees under the Act, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1980.105(b). The objections, request for a hearing, and/or request for attorney's fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or email communication is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which shall not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only based on exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or preliminary order shall become the final decision of the Secretary, not subject to judicial review.

§ 1980.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A of Part 18 of this title.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo,* on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1980.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as *amicus curiae* at any time at any stage of the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Copies of documents in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, as well as all other parties.

(b) The Securities and Exchange Commission, if interested in a proceeding, may participate as *amicus curiae* at any time in the proceeding, at the Commission's discretion. At the request of the Securities and Exchange Commission, copies of all pleadings in a case must be sent to the Commission, whether or not the Commission is participating in the proceeding.

§ 1980.109 Decision and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

(c) Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1980.104(e) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the order will provide all relief necessary to make the employee whole, including reinstatement with the same seniority status that the complainant would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees. Interest on back pay will be calculated using the interest rate applicable to underpayment

of taxes under 26 U.S.C. 6621 and will be compounded daily.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint was frivolous or was brought in bad faith, the judge may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1980.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board, U.S. Department of Labor (ARB), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the ARB, and the ARB accepts the petition for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay the order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be 10 business days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the final order will include all relief necessary to make the complainant whole, including reinstatement with the same seniority status that the complainant would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1980.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by notifying the Assistant Secretary, orally or in writing, of his or her withdrawal. The Assistant Secretary then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. The Assistant Secretary will notify the parties (and each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw his or her findings and/or preliminary order at any time before the expiration of the 30-day objection period described in § 1980.106, provided that no objection has yet been filed, and substitute new findings and/or preliminary order. The date of the receipt of the substituted findings and/or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw its objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings or order, and there are no other pending objections, the Assistant Secretary's findings and order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the respondent agree to a settlement. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates his or her consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB, will constitute the final order of the Secretary and may be enforced pursuant to § 1980.113.

§ 1980.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1980.109 and 1980.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order of the ARB is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1980.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under the Act, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. In such civil actions, the district court will have jurisdiction to grant all appropriate relief, including, but not limited to, injunctive relief and compensatory damages, including:

(a) Reinstatement with the same seniority status that the employee would have had, but for the discharge or retaliation;

(b) The amount of back pay, with interest; and

(c) Compensation for any special damages sustained as a result of the discharge or retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees.

§ 1980.114 District court jurisdiction of retaliation complaints.

(a) If the Secretary has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. A party to an action brought under this paragraph shall be entitled to trial by jury.

(b) Within seven days after filing a complaint in Federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the Regional Administrator, the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

§ 1980.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires.

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Correcting amendment.

SUMMARY: The Department of the Navy (DoN) published a final rule in the **Federal Register** (76 FR 58399) of September 21, 2011, concerning certifications and exemptions under the International Regulations for Preventing collisions at Sea, 1972 (72 COLREGS). The document added an entry to Table Four, paragraph 23, in § 706.2. The existing table has three columns and the proposed entry has four columns. This correcting amendment corrects that information.

DATES: Effective November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS FORT WORTH (LCS 3) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27, paragraph (b)i, pertaining to the verticality of the three all-round task lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is corrected pursuant to the authority granted in 33 U.S.C. 1605 by making the following correcting amendments:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Four, under paragraph 23, by revising the table to read as follows:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

* * * * *

23. * * *

Vessel	Number	Vertically of lights, when viewed directly from the port or starboard, the lower task light is out of alignment with the upper and middle task light in meters by:	Vertically of lights, when viewed directly from the bow or stern, the lower task light is with out of alignment the upper and middle task light in meters by:
USV	11MUCO601	0.85	
	11MUCO602	0.85	
	11MUCO603	0.85	
	11MUCO604	0.85	
USS FORT WORTH	LCS 3		0.21

* * * * *

Approved: October 24, 2011.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 2011–28479 Filed 11–2–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0991]

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Captree State Parkway Bridge at mile 30.7, across the State Boat Channel at Captree Island, New York. The deviation is necessary to facilitate emergency bridge repairs as a result of a recent fire at the bridge. This deviation allows the bridge to open on a limited opening schedule to help facilitate necessary repairs.

DATES: This deviation is effective from October 28, 2011 through January 31, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0991 and are available online at *http://www.regulations.gov,* inserting USCG–2011–0991 in the ''Keyword'' 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 rule, call or *email* Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil,* or *telephone* (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Captree State Parkway Bridge, across the State Boat Channel at mile 30.7, at Captree Island, New York, has a vertical clearance in the closed position of 29 feet at mean high water and 30 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.799(i).

The waterway users are recreational vessels of various sizes. The bridge opened 7 times in both June and July, 3 openings in August, and 6 openings in September. During the winter months the bridge rarely opens since the recreational vessels that transit this waterway are normally in winter storage.

The owner of the bridge, New York State Department of Transportation, requested a temporary deviation from the regulations to help facilitate emergency repairs at the bridge as a result of a recent fire at the bridge on October 9, 2011.

Under this temporary deviation the Captree State Parkway Bridge shall operate as follows: from October 28, 2011 through January 31, 2012, the draw shall open every three hours between 8 a.m. and 5 p.m., after at least a two-hour advance notice is given by calling the number posted at the bridge, (631) 904–3050. Vessels that can pass under the bridge in the closed position may do so at any time.

The Coast Guard believes that this temporary deviation should meet the reasonable needs of navigation because the recreational users that normally use this bridge are recreational vessels that do not operate during the winter months when this deviation will be in effect.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 24, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–28446 Filed 11–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0615]

RIN 1625–AA00

Safety Zone; Fourth Annual Chillounge Night St. Petersburg Fireworks Display, Tampa Bay, St. Petersburg, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Tampa Bay in St. Petersburg, Florida during the Fourth Annual Chillounge Night St. Petersburg Fireworks Display on Saturday, November 19, 2011. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. 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 St. Petersburg or a designated representative.

DATES: This rule is effective from 9:30 p.m. until 10:45 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–2011–0615 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0615 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 final rule, call or email Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; *telephone* (813) 228–2191, *email* Nolan.L.Ammons@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 26, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Fourth Annual Chillounge Night St. Petersburg Fireworks Display, Tampa Bay, St. Petersburg, FL in the **Federal Register** (76 FR 44531). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the dangers posed by the pyrotechnics used in these fireworks displays, the safety zones are necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event areas. For the safety concerns noted, it is in the public interest to have these regulations in effect during the events. This rule is intended to ensure the safety of the event participants, spectators and other waterway users, thus any delay in the rule's effective date would be impractical.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

Discussion of Comments and Changes

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

Discussion of Rule

On November 19, 2011, a fireworks display is scheduled to take place during the Fourth Annual Chillounge Night St. Petersburg, an annual outdoor party, in St. Petersburg, Florida. The fireworks, which will be launched from Spa Beach Park, will explode over the waters of Tampa Bay. The fireworks display is scheduled to commence at 10 p.m. and conclude at approximately 10:05 p.m.

This rule establishes a temporary safety zone that encompasses certain waters of Tampa Bay in the vicinity of Spa Beach in St. Petersburg, Florida. The temporary safety zone will be enforced from 9:30 p.m. on November 19, 2011, 30 minutes prior to the scheduled commencement of the fireworks display at approximately 10 p.m., to ensure the safety zone is clear of persons and vessels. Enforcement of the safety zone would cease at 10:45 p.m. on November 19, 2011, 40 minutes after the scheduled conclusion of the fireworks display, to account for possible delays. 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 St. Petersburg 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 St. Petersburg by telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to request authorization. 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 two hours; (2) vessel traffic in the area will be minimal during the enforcement period; (3) 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 St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port St. Petersburg or a designated representative; and (5) 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 Tampa Bay encompassed within the safety zone from 9:30 p.m. until 10:45 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 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 might 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, which will be enforced for less than two 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.T07–0615 to read as follows:

§ 165.T07–0615 Safety Zone; Fourth Annual Chillounge Night St. Petersburg Fireworks Display, Tampa Bay, St. Petersburg, FL.

(a) *Regulated area.* The following regulated area is a safety zone: All waters of Tampa Bay within a 200 yard radius of position 27°46′31″ N, 82°37′38″ W. 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 St. Petersburg 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 St. Petersburg 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 St. Petersburg by telephone at (727) 824–7524, 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 area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

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

(d) *Effective date.* This rule is effective from 9:30 p.m. until 10:45 p.m. on November 19, 2011.

Dated: October 13, 2011.

S.L. Dickinson,

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

[FR Doc. 2011–28445 Filed 11–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0774]

RIN 1625–AA00

Safety Zone; Art Gallery Party St. Pete 2011 Fireworks Display, Tampa Bay, St. Petersburg, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Tampa Bay in the vicinity of Spa Beach in St. Petersburg, Florida during the Art Gallery Party St. Pete 2011 Fireworks Display on Friday, November 11, 2011. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over the navigable waters of the United States. 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 St. Petersburg or a designated representative.

DATES: This rule is effective from 10:30 p.m. until 11:35 p.m. on November 11, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0774 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0774 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 email Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; *telephone* (813) 228–2191, *email Nolan.L.Ammons@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 because the Coast Guard did not receive necessary information regarding the fireworks display until August 1, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks display. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks display.

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**. Due to the dangers posed by the pyrotechnics used in these fireworks displays, the safety zones are necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event areas. For the safety concerns noted, it is in the public interest to have these regulations in effect during the events. This rule is intended to ensure the safety of the event participants, spectators and other waterway users, thus any delay in the rule's effective date would be impractical.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

Discussion of Rule

On November 11, 2011, Creative Pyrotechnics is sponsoring the Art Gallery Party St. Pete 2011 Fireworks Display in St. Petersburg, Florida. The fireworks display will be launched from Spa Beach and will explode over the waters of Tampa Bay. The fireworks display is scheduled to commence at 11 p.m. and conclude at 11:05 p.m.

The safety zone encompasses certain waters of Tampa Bay within the vicinity of Spa Beach in St. Petersburg, Florida. This safety zone will be enforced from 10:30 p.m. on November 11, 2011, thirty minutes prior to the scheduled commencement of the fireworks display at approximately 11 p.m., to ensure the safety zone is clear of persons and vessels. Enforcement of the safety zone will cease at 11:35 p.m. on November 11, 2011, thirty minutes after the scheduled conclusion of the fireworks display, to account for possible delays.

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 St. Petersburg or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, 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 safety zone is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. 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.

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 safety zone will be enforced for one hour and five minutes; (2) vessel traffic in the area is expected to be minimal during the enforcement period; (3) 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 St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port St. Petersburg or a designated representative; and (5) 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 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 Tampa Bay encompassed within the safety zone from 10:30 p.m. until 11:35 p.m. on November 11, 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)(g), of the Instruction. This rule involves the establishment of a temporary safety zone that will be enforced for a total of one hour and five minutes. 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.T07–0774 to read as follows:

§ 165.T07–0774 Safety Zone; Art Gallery Party St. Pete 2011 Fireworks Display, Tampa Bay, St. Petersburg, FL.

(a) *Regulated area.* The following regulated area is a safety zone: all waters of Tampa Bay within a 140-yard radius of position 27°46′31″ N, 82°37′38″ W. 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 St. Petersburg 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 St. Petersburg 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 St. Petersburg by telephone at (727) 824–7524, 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 area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

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

(d) *Effective date.* This rule is effective from 10:30 p.m. until 11:35 p.m. on November 11, 2011.

Dated: September 28, 2011.

S.L. Dickinson,

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

[FR Doc. 2011–28448 Filed 11–2–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0463; FRL–9481–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on June 30, 2011 and concerns volatile organic compound (VOC) and particulate matter (PM) emissions from commercial charbroilers. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on December 5, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0463 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business

hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: David Grounds, EPA Region IX, (415) 972–3019, *grounds.david@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action

On June 30, 2011 (76 FR 38340), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4692	Commercial Charbroiling	09/17/2009	05/17/10

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from the following party.

1. Sarah Jackson, Earthjustice, letter dated August 1, 2011. The comments and our responses are summarized below.

Comment #1: Earthjustice asserts that EPA must disapprove Rule 4692 for failure to satisfy CAA requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM) because the rule does not require reasonable controls on under-fired charbroilers (UFC).

Response #1: For the reasons discussed in our proposed rule (76 FR 38340) and further below, we disagree and continue to believe that Rule 4692 requires all control measures that are ''reasonably available'' for implementation in the San Joaquin Valley (SJV), considering technical and economic feasibility. We respond more specifically below to Earthjustice's assertions regarding the technical and economic feasibility of UFC controls.

Comment #2: Earthjustice asserts that reductions from this source category played a significant role in SJVUAPCD's plan to reduce $PM_{2.5}$ levels in the SJV, but the current rule reduces emissions by only 0.02 tons/day—less than 1% of what was promised in SJVUAPCD's 2008 $PM_{2.5}$ plan.

Response #2: As discussed in our proposal, EPA evaluated Rule 4692 to determine whether it complies with the enforceability requirements of CAA section 110(a) and whether EPA's approval of it into the SIP would satisfy the requirements concerning attainment and reasonable further progress (RFP) in CAA section 110(l). Although this rule is not subject to the specific ozone RACT control requirement in CAA 182(b)(2) and (f), we also evaluated the control requirements in the rule to determine whether it requires all measures that are ''reasonably available'' for implementation in the SJV, considering technical and economic feasibility. We did not evaluate the emission reductions associated with this rule as such an evaluation belongs in the context of EPA's action on the State/District's RACM demonstration for the relevant NAAQS. For this reason, we did not propose to make a regulatory determination with respect to RACM in this rulemaking. Instead, we evaluated only the control requirements in the rule and considered whether additional controls for this particular source category are demonstrated to be technically and economically feasible for implementation in the area at this time. As stated in the Technical Support Document (TSD) for our proposal, EPA will take action in separate rulemakings on the State's RACM demonstration for the relevant NAAQS based on an evaluation of the control measures submitted as a whole and their overall potential to advance the applicable attainment dates in the SJV. See Technical Support Document For EPA's Direct Final Rulemaking For the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District Rule 4692, Commercial Charbroiling, EPA Region 9, June 9, 2011, page 4 (TSD).

Comment #3: Earthjustice contends that SJVUAPCD's May 2009 Rule 4692 staff report states that UFC control is reasonably available and cost-effective at as little as $5,800 per ton PM reduced, and that SJVUAPCD subsequently abandoned UFC control based on inflated new cost information. Earthjustice also asserts that the October 2009 staff report does not include UFC emission reduction estimates needed to recalculate UFC control cost-effectiveness. Finally, Earthjustice asserts that even using the new inflated cost information and the May 2009 emission estimates, UFC control is still more cost-effective than chain-driven charbroiler controls that SJVUAPCD and EPA are approving in Rule 4692 as reasonable.

Response #3: The $5,800/ton estimate provided in SJVUAPCD's May 2009 staff report references a draft staff report that relies on 2007 estimates from the Bay Area Air Quality Management District (BAAQMD).[1] This was the low end of a range of estimates that BAAQMD had developed; the high end of BAAQMD's cost estimates were over $100,000/ton. See response to comment 5 below. In 2009, SJVUAPCD revised the low end of the range in the draft staff report by increasing it to $22,300/ton, based on updated information including cost quotes from vendors of control equipment. SJVUAPCD's revised cost-effectiveness analysis still resulted in cost-per-ton estimates for UFC controls within the range of estimates developed by BAAQMD and the South Coast Air Quality Management District (SCAQMD). We believe these cost estimates were performed following standard accepted procedures and the commenter has not provided specific information to demonstrate otherwise.

Comment #4: Earthjustice comments that appendix C to SJVUAPCD's October 2009 staff report assigns emission reductions of 0.453 tons per year (tpy) per restaurant to potential UFC controls but never explains the basis for this estimate or why it is used instead of BAAQMD's estimate, which is based on scientific studies. Earthjustice asserts that 1.44 tons per day (tpd) (the median of the range provided in SJVUAPVD's May 21, 2009 staff report) is a more appropriate estimate of emission reductions from UFC controls.

Response #4: In response to EPA's inquiry regarding SJVUAPCD's cost-effectiveness evaluation, the District provided additional information to explain the cost-effectiveness analyses in its August 2009 and September 2009 staff reports.[2] Specifically, SJVUAPCD identified the sources of its emission

[1] Final Draft Staff Report for Proposed Amendments to Rule 4692, SJVUAPCD, May 21, 2009, pages C–4 and C–5.

[2] Email from Sandra Lowe-Leseth (SJVUAPCD) to David Grounds (EPA), September 22, 2011, with attachment.

factor data and explained the assumptions underlying its calculations of the incremental cost-effectiveness of UFC controls. SJVUAPCD used information from Dun & Bradstreet on the number of restaurants operating within SJV, together with other reasonable assumptions about the numbers of UFC units and the quantities and types of meats grilled at these restaurants, to develop a ''composite'' emission factor for the source category, which provided the basis for its estimate of 0.453 tpy in potential $PM_{2.5}$ reductions per restaurant from the use of UFC controls. The SJVUAPCD notes that Earthjustice appears to have estimated PM_{10} instead of $PM_{2.5}$ emissions, which increased the emission reduction estimates, and to have relied on less accurate estimates of the quantity of meat cooked and emission factors for various charbroiled meats. We have reviewed the additional information provided by SJVUAPCD and concur with the District that additional UFC controls have not been demonstrated to be ''reasonably available'' considering technical and economic feasibility in the SJV area at this time.

Comment #5: Earthjustice comments that except for the wet scrubber, no explanation is given for why SJVUAPCD's estimates for UFC control cost are much higher than BAAQMD's.

Response #5: As explained in our TSD, SJVUAPCD's cost estimates for UFC controls are within the range of cost estimates that other California districts have developed for similar controls. See TSD at 4. SJVUAPCD estimates that the cost of UFC controls ranges from $22K–$58K/ton $PM_{2.5}$ reduced,[3] BAAQMD estimates $17K–$143K/ton VOC or PM,[4] and SCAQMD estimates $8K–$34K/ton PM.[5] The commenter has provided no specific information to indicate otherwise.

Comment #6: Earthjustice comments that BAAQMD concluded that UFC control is cost-effective and adopted control requirements in 2007. Earthjustice also asserts that EPA's claim that UFC controls are not reasonably available because none have yet been certified to comply with BAAQMD's rule ''is absurd since * * * certification is not required until the rule limits take effect in 2013.''

Response #6: We explained in our TSD our reasons for concurring with SJVUAPCD's conclusion that UFC control is not reasonably available for implementation within the SJV at this time.[6] These include SJVUAPCD's cost-effectiveness analysis of UFC controls and concerns regarding the technical feasibility of UFC controls. We also noted that we are unaware of any other federal or state regulation or guidance suggesting UFC control is reasonably available for the commercial charbroiling industry except for BAAQMD's Regulation 6 Rule 2. We therefore disagree with Earthjustice's suggestion that the absence of compliance certifications under the BAAQMD's rule provided the only basis for our conclusion. As to BAAQMD's rule, we noted that most facilities in the Bay Area are too small to trigger the UFC control requirements of Regulation 6 Rule 2 and that no facilities had yet certified compliance with these limits. This information is relevant to our evaluation of technical feasibility because, until the BAAQMD confirms that sources are complying with the UFC control requirements, we have only limited information indicating that such controls are demonstrated to be technically feasible for the commercial charbroiling industry. It appears, however, that a large number of facilities (200) may be subject to BAAQMD's UFC control requirement[7] and will be required to certify by 2013 whether they are complying with the UFC control requirements of that rule. We encourage the District to reevaluate Rule 4692 at the earliest opportunity, taking into account the most recent information about the technical and economic feasibility of UFC controls, and to adopt all reasonably available control measures for commercial charbroiling that will expedite attainment of the $PM_{2.5}$ and ozone NAAQS in the SJV.

Comment #7: Earthjustice asserts that actual controls have been installed in California and provide empirical data on costs and emission reductions, and further claims that EPA and SJVUAPCD are ignoring this data and relying on conflicting information that lacks any reasonable basis.

Response #7: We do not dispute that UFC controls have been installed at facilities in California.[8] As discussed in our responses above, however, SJVUAPCD explained the basis for its assessment of the economic feasibility of UFC controls in SJV, including the empirical data underlying these evaluations, and we concur with the District's conclusion based on these evaluations that UFC control is not reasonably available in the SJV at this time.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. Statutory and Executive Order Reviews

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

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

[3] Final Staff Report for Amendments to Rule 4692, SJVUAPCD, October 8, 2009, pages 2 and C–6.

[4] Staff Report for Regulation 6, Rule 2, BAAQMD, November 2007, page 26 (BAAQMD Staff Report).

[5] Preliminary Draft Staff Report: Proposed Amended Rule 1138, SCAQMD, August 2009, Table 4.

[6] EPA TSD, pages 4–5.

[7] BAAQMD Staff Report, page 18.

[8] See Final Staff Report for Amendments to Rule 4692, SJVUAPCD, October 8, 2009, pages 11–12.

be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(379)(i)(C)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(379) * * *

(i) * * *

(C) * * *

(*5*) Rule 4692, ''Commercial Charbroiling,'' amended on September 17, 2009.

* * * * *

[FR Doc. 2011–28388 Filed 11–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0601; FRL–9481–6]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on August 23, 2011 and concern volatile organic compound (VOC), oxides of nitrogen (NO_X), and particulate matter (PM) emissions from flares. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on December 5, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0601 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action

On August 23, 2011 (76 FR 52623), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4311	Flares	06/18/09	01/10/10

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the

Act, EPA is fully approving this rule into the California SIP.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: October 6, 2011.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(378)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(378) * * *

(i) * * *

(D) San Joaquin Valley Air Pollution Control District

(*1*) Rule 4311, ''Flares,'' amended on June 18, 2009.

* * * * *

[FR Doc. 2011–28391 Filed 11–2–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified

elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Claiborne County, Tennessee Docket No.: FEMA–B–1151				
Tennessee	Unincorporated Areas of Claiborne County.	Clinch River	Approximately 2.3 miles downstream of Big Barren Creek.	+1032
			Approximately 28 miles upstream of Big Sycamore Creek.	+1032

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Claiborne County

Maps are available for inspection at the Claiborne County Courthouse, 1740 Main Street, Tazewell, TN 37879.

City of Poquoson, Virginia (Independent City) Docket No.: FEMA–B–1137				
Virginia	City of Poquoson	Chesapeake Bay	At the intersection of Hunt Wood Drive and Oscars Court.	+7
Virginia	City of Poquoson	Chesapeake Bay/ Cedar Creek.	At the intersection of Villa Drive and Huntlandia Way.	+7
			Approximately 400 feet north of the intersection of State Route 171 and City Hall Avenue.	+7

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Poquoson

Maps are available for inspection at the Building Official's Office, 500 City Hall Avenue, Poquoson, VA 23662.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Lee County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1054			
Bird Creek	At the confluence with Saugahatchee Creek	+507	Unincorporated Areas of Lee County.
	Approximately 1.9 miles upstream of the confluence with Saugahatchee Creek.	+537	
Branch 1 of Saugahatchee Creek.	At the confluence with Saugahatchee Creek	+574	City of Auburn.
	Approximately 622 feet upstream of Dunford Avenue	+673	
Branch 1 of Saugahatchee Creek Tributary 1.	At the confluence with Branch 1 of Saugahatchee Creek	+594	City of Auburn.
	Approximately 1,505 feet upstream of Shug Jordan Parkway.	+646	
Branch 1 of Saugahatchee Creek Tributary 2.	At the confluence with Branch 1 of Saugahatchee Creek	+607	City of Auburn.
	Approximately 1,440 feet upstream of Boykin Road	+678	
Branch 2 of Saugahatchee Creek.	At the confluence with Saugahatchee Creek	+578	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 640 feet upstream of Gatewood Drive	+693	
Branch 2 of Saugahatchee Creek Tributary 1.	At the confluence with Branch 2 of Saugahatchee Creek	+584	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 2,553 feet upstream of the confluence with Branch 2 of Saugahatchee Creek.	+632	
Branch 2 of Saugahatchee Creek Tributary 2.	At the confluence with Branch 2 of Saugahatchee Creek	+594	City of Auburn.
	Approximately 1,581 feet upstream of North Cary Drive	+652	
Branch 2 of Saugahatchee Creek Tributary 3.	At the confluence with Branch 2 of Saugahatchee Creek	+606	City of Auburn.
	Approximately 171 feet upstream of North Dean Road	+716	
Branch 2 of Saugahatchee Creek Tributary 3.1.	At the confluence with Branch 2 of Saugahatchee Creek Tributary 3.	+637	City of Auburn.
	Approximately 801 feet upstream of Hollins Road	+707	
Branch 2 of Saugahatchee Creek Tributary 4.	At the confluence with Branch 2 of Saugahatchee Creek	+673	City of Auburn.
	Approximately 201 feet upstream of Rick Drive	+726	
Branch of Parkerson Mill Creek	Approximately 471 feet downstream of Timberwood Drive	+441	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 39 feet upstream of Timberwood Drive	+447	
Chewacla Creek	Approximately 1,500 feet upstream of the Lee County boundary.	+354	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 3,592 feet upstream of Lee Road 112	+557	
Chewacla Creek Tributary 12	At the confluence with Chewacla Creek	+550	Unincorporated Areas of Lee County.
	Approximately 2,807 feet upstream of Johnson Lake earthen dam.	+558	
Chewacla Creek Tributary 14	At the confluence with Chewacla Creek	+539	Unincorporated Areas of Lee County.
	Approximately 2,999 feet upstream of the confluence with Chewacla Creek.	+548	
Chewacla Creek Tributary 15	At the confluence with Chewacla Creek	+533	Unincorporated Areas of Lee County.
	Approximately 4,154 feet upstream of the confluence with Chewacla Creek.	+555	
Chewacla Creek Tributary 23	At the confluence with Chewacla Creek	+436	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 157 feet upstream of Springhill Drive	+484	
Chewacla Creek Tributary 29	At the confluence with Chewacla Creek	+369	Unincorporated Areas of Lee County.
	Approximately 3,138 feet upstream of the confluence with Chewacla Creek.	+384	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Choctafaula Creek	Approximately 505 feet upstream of the Lee County boundary.	+375	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 1.5 miles upstream of Beehive Road	+474	
Choctafaula Creek Tributary 10	At the confluence with Choctafaula Creek	+468	Unincorporated Areas of Lee County.
	Approximately 1,552 feet upstream of the earthen dam	+534	
Choctafaula Creek Tributary 10.1.	At the confluence with Choctafaula Creek	+487	Unincorporated Areas of Lee County.
	Approximately 2,848 feet upstream of the confluence	+527	
Choctafaula Creek Tributary 9	At the confluence with Choctafaula Creek	+465	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 1.7 feet upstream of Wire Road	+632	
Cossey Branch	Approximately 1,954 feet upstream of the Lee County boundary.	+356	Unincorporated Areas of Lee County.
	Approximately 1.1 miles upstream of Highway 29	+452	
Cossey Branch Tributary 5	At the confluence with Cossey Branch	+380	Unincorporated Areas of Lee County.
	Approximately 5,610 feet upstream of the confluence with Cossey Branch.	+403	
Cossey Branch Tributary 8	At the confluence with Cossey Branch	+407	Unincorporated Areas of Lee County.
	Approximately 1.0 mile upstream of the confluence with Cossey Branch.	+428	
Halawakee Creek Tributary 8	At the confluence with Halawakee Creek	+645	City of Opelika, Unincorporated Areas of Lee County.
	Approximately 2,282 feet upstream of Jeter Avenue	+748	
Halawakee Creek Tributary 8.5	At the confluence with Halawakee Creek Tributary 8	+649	City of Opelika.
	Approximately 2,000 feet upstream of the confluence with Halawakee Creek Tributary 8.	+653	
Halawakee Creek Tributary 8.6	At the confluence with Halawakee Creek Tributary 8	+668	City of Opelika.
	Approximately 254 feet upstream of U.S. Route 280	+677	
Halawakee Creek Tributary 8.7	At the confluence with Halawakee Creek Tributary 8	+679	City of Opelika.
	Approximately 1,067 feet upstream of South Fox Run Parkway.	+712	
Halawakee Creek Tributary 8.7.3.	At the confluence with Halawakee Creek Tributary 8.7	+693	City of Opelika.
	Approximately 4,500 feet upstream of the confluence with Halawakee Creek Tributary 8.7.	+718	
Halawakee Creek Tributary 8.8	At the confluence with Halawakee Creek Tributary 8	+679	City of Opelika.
	Approximately 269 feet upstream of Jeter Avenue	+707	
Halawakee Tributary 8.7.1	At the confluence with Halawakee Creek Tributary 8.7	+689	City of Opelika.
	Approximately 2,538 feet upstream of the confluence with Halawakee Creek Tributary 8.7.	+707	
Halawakee Tributary 8.7.2	At the confluence with Halawakee Creek Tributary 8.7	+693	City of Opelika.
	Approximately 1,585 feet upstream of Highway 51	+717	
Little Loblockee Creek	At the confluence with Loblockee Creek	+598	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 2.2 miles upstream of Highway 280	+701	
Loblockee Creek	At the confluence with Saugahatchee Creek	+522	Unincorporated Areas of Lee County.
	Approximately 11,694 feet upstream of U.S. Route 280	+686	
Loblockee Creek Tributary 12	At the confluence with Loblockee Creek	+612	Unincorporated Areas of Lee County.
	Approximately 3,748 feet upstream of the confluence with Loblockee Creek.	+631	
Loblockee Creek Tributary 3	At the confluence with Loblockee Creek	+562	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 2.0 miles upstream of Farmville Road	+666	
Miles Creek	Approximately 188 feet upstream of the Lee County boundary.	+386	Unincorporated Areas of Lee County.
	Approximately 881 feet upstream of County Road 393	+458	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Moore's Mill Creek	At the confluence with Chewacla Creek	+414	City of Auburn, City of Opelika, Unincorporated Areas of Lee County.
	Approximately 2.0 miles upstream of Bent Creek Road	+687	
Moore's Mill Creek Tributary 2	At the confluence with Moore's Mill Creek	+527	City of Auburn.
	Approximately 1,561 feet upstream of VFW Road	+609	
Moore's Mill Creek Tributary 3	At the confluence with Moore's Mill Creek	+531	City of Auburn.
	Approximately 86 feet upstream of the earthen dam	+594	
Moore's Mill Creek Tributary 4	At the confluence with Moore's Mill Creek	+543	City of Auburn.
	Approximately 1,135 feet upstream of Core Drive	+608	
Moore's Mill Creek Tributary 5	At the confluence with Moore's Mill Creek	+553	City of Auburn.
	Approximately 85 feet upstream of Lauren Lane	+628	
Moore's Mill Creek Tributary 6	At the confluence with Moore's Mill Creek	+573	City of Auburn.
	Approximately 562 feet upstream of Burke Place	+706	
Moore's Mill Creek Tributary 6.2	At the confluence with Moore's Mill Creek Tributary 6	+618	City of Auburn.
	Approximately 3,057 feet upstream of East University Drive.	+707	
Nash Creek	At the confluence with Chewacla Creek	+495	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 142 feet upstream of Society Hill Road	+548	
Nash Creek Tributary 1	At the confluence with Nash Creek	+537	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 2,366 feet upstream of the confluence with Nash Creek.	+578	
Odom Creek	At the confluence with Cossey Branch	+412	Unincorporated Areas of Lee County.
	Approximately 1.2 miles upstream of County Road 27	+447	
Parkerson Mill Creek	At the confluence with Chewacla Creek	+387	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 2,604 feet upstream of Wire Road	+645	
Parkerson Mill Creek Tributary 10.	At the confluence with Parkerson Mill Creek	+597	City of Auburn.
	Approximately 2,801 feet upstream of the confluence with Parkerson Mill Creek.	+650	
Parkerson Mill Creek Tributary 3.	At the confluence with Parkerson Mill Creek	+514	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 1,469 feet upstream of Longleaf Drive	+576	
Parkerson Mill Creek Tributary 6.	At the confluence with Parkerson Mill Creek	+527	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 367 feet upstream of Webster Road	+657	
Parkerson Mill Creek Tributary 6.1.	At the confluence with Parkerson Mill Creek Tributary 6	+606	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 339 feet upstream of Webster Road	+637	
Parkerson Mill Creek Tributary 6.2.	At the confluence with Parkerson Mill Creek Tributary 6	+587	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 116 feet upstream of Raptor Road	+631	
Parkerson Mill Creek Tributary 7.	At the confluence with Parkerson Mill Creek	+530	City of Auburn.
	Approximately 1,557 feet upstream of the confluence with Parkerson Mill Creek Tributary 7.	+566	
Parkerson Mill Creek Tributary 7.1.	At the confluence with Parkerson Mill Creek Tributary 7	+546	City of Auburn.
	Approximately 538 feet upstream of the earthen dam	+569	
Parkerson Mill Creek Tributary 9.	At the confluence with Parkerson Mill Creek	+568	City of Auburn.
	Approximately 157 feet upstream of Shug Jordan Parkway.	+687	
Pepperell Creek	Approximately 120 feet upstream of Gateway Drive	+710	City of Opelika.
	Approximately 68 feet upstream of Fruitland Avenue	+753	
Pepperell Creek Tributary 4	At the confluence with Pepperell Creek	+707	City of Opelika.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
	Approximately 2,554 feet upstream of U.S. Route 280	+753	
Pepperell Creek Tributary 7	At the confluence with Pepperell Creek	+723	City of Opelika.
	Approximately 742 feet upstream of South Long Street	+740	
Pepperell Creek Tributary 8	At the confluence with Pepperell Creek	+726	City of Opelika.
	Approximately 158 feet upstream of Hurst Street	+740	
Robinson Creek	At the confluence with Chewacla Creek	+557	Unincorporated Areas of Lee County.
	Approximately 2.6 miles upstream of Moores Mill Road	+618	
Rocky Creek	Approximately 1,370 feet downstream of India Road	+717	City of Opelika.
	Approximately 279 feet upstream of Rocky Brook Road ...	+752	
Rocky Creek Tributary 6	At the confluence with Rocky Creek	+683	City of Opelika.
	Approximately 271 feet upstream of Bonita Avenue	+720	
Rocky Creek Tributary 7	At the confluence with Rocky Creek	+696	City of Opelika.
	Approximately 146 feet upstream of Preston Street	+776	
Rocky Creek Tributary 9	At the confluence with Rocky Creek	+719	City of Opelika.
	Approximately 1,246 feet upstream of the confluence with Rocky Creek.	+734	
Saugahatchee Creek 34.4	At the confluence with Saugahatchee Creek Tributary 34	+589	City of Auburn.
	Approximately 3,190 feet upstream of Willow Creek Road	+641	
Saugahatchee Creek 34.5	At the confluence with Saugahatchee Creek Tributary 34	+590	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 5,000 feet upstream of the confluence with Saugahatchee Creek Tributary 34.	+658	
Saugahatchee Creek 34.5.2	At the confluence with Saugahatchee Creek Tributary 34.5.	+599	City of Auburn.
	Approximately 2,000 feet upstream of the confluence with Saugahatchee Creek Tributary 34.5.	+621	
Saugahatchee Creek 34.7	At the confluence with Saugahatchee Creek Tributary 34	+642	City of Auburn.
	Approximately 1,115 feet upstream of Martin Luther King Drive.	+669	
Saugahatchee Creek Tributary 18.	At the confluence with Saugahatchee Creek	+613	City of Opelika, Unincorporated Areas of Lee County.
	Approximately 711 feet upstream of the railroad	+721	
Saugahatchee Creek Tributary 29.	At the confluence with Saugahatchee Creek	+571	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 3,331 feet upstream of the confluence with Saugahatchee Creek.	+642	
Saugahatchee Creek Tributary 34.	At the confluence with Saugahatchee Creek	+553	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 1.7 miles upstream of the confluence with Saugahatchee Creek.	+688	
Saugahatchee Creek Tributary 34.3.	At the confluence with Saugahatchee Creek Tributary 34	+568	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 3,949 feet upstream of the confluence with Saugahatchee Creek Tributary 34.	+614	
Saugahatchee Creek Tributary 44.	At the confluence with Saugahatchee Creek	+540	Unincorporated Areas of Lee County.
	Approximately 9,127 feet upstream of the confluence with Saugahatchee Creek.	+573	
Town Creek	At the confluence with Chewacla Creek	+401	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 796 feet upstream of Thach Avenue	+601	
Town Creek Tributary 1	At the confluence with Town Creek	+460	City of Auburn, Unincorporated Areas of Lee County.
	Approximately 602 feet upstream of Donahue Drive	+589	
Town Creek Tributary 2	At the confluence with Town Creek	+512	City of Auburn.
	Approximately 1,319 feet upstream of Janabrooke Lane ...	+540	
Town Creek Tributary 3	At the confluence with Town Creek	+584	City of Auburn.
	Approximately 112 feet upstream of East University Drive	+614	
Town Creek Tributary 4	At the confluence with Town Creek	+590	City of Auburn.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 404 feet upstream of College Street	+654	
Town Creek Tributary 6	At the confluence with Town Creek	+631	City of Auburn.
	Approximately 331 feet upstream of Thach Avenue	+656	
Unnamed Tributary 1	Approximately 52 feet upstream of the Lee County boundary.	+376	Unincorporated Areas of Lee County.
	Approximately 976 feet upstream of the Lee County boundary.	+400	
Unnamed Tributary 2	Approximately 120 feet upstream of the Lee County boundary.	+372	Unincorporated Areas of Lee County.
	Approximately 1,500 feet upstream of the Lee County boundary.	+384	
Webb Branch	At the confluence with Loblockee Creek	+594	Unincorporated Areas of Lee County.
	Approximately 2.7 miles upstream of Farmville Road	+655	
Webb Branch Tributary 3	At the confluence with Webb Branch	+599	Unincorporated Areas of Lee County.
	Approximately 2,340 feet upstream of the confluence with Webb Branch.	+606	
Webb Branch Tributary 4	At the confluence with Webb Branch	+611	Unincorporated Areas of Lee County.
	Approximately 2,461 feet upstream of the confluence with Webb Branch.	+624	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Auburn
Maps are available for inspection at 144 Tichenor Avenue, Suite 1, Auburn, AL 36830.

City of Opelika
Maps are available for inspection at the Planning Department, 700 Fox Trail, Opelika, AL 36803.

Unincorporated Areas of Lee County
Maps are available for inspection at 909 Avenue A, Opelika, AL 36801.

Hardin County, Illinois, and Incorporated Areas
Docket No.: FEMA–B–1134

Beaver Creek	Approximately 1.58 miles upstream of IL–1	+366	Unincorporated Areas of Hardin County.
	Approximately 1.92 miles upstream of IL–1	+366	
Ohio River	Approximately 1.34 miles downstream of Ferry Road extended (River Mile 894).	+356	City of Rosiclare, Unincorporated Areas of Hardin County, Village of Elizabethtown.
	Approximately 1.97 miles upstream of Main Street extended (River Mile 887).	+359	
Unnamed Tributary to Beaver Creek (East).	Approximately 1,500 feet upstream of the confluence with Beaver Creek.	+366	Unincorporated Areas of Hardin County.
	Approximately 0.69 mile upstream of the confluence with Beaver Creek.	+366	
Unnamed Tributary to Beaver Creek (West).	Approximately 1,500 feet upstream of the confluence with Beaver Creek.	+366	Unincorporated Areas of Hardin County.
	Approximately 0.99 mile upstream of the confluence with Beaver Creek.	+366	
Unnamed Tributary to Saline River.	Approximately 1,800 feet upstream of the confluence with the Saline River.	+366	Unincorporated Areas of Hardin County.
	Approximately 2,000 feet upstream of the confluence with the Saline River.	+366	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Rosiclare
Maps are available for inspection at City Hall, Main Street, Rosiclare, IL 62982.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Unincorporated Areas of Hardin County			
Maps are available for inspection at the Hardin County Courthouse, 203 North Main Street, Elizabethtown, IL 62931.			
Village of Elizabethtown			
Maps are available for inspection at the Village Hall, 1 Locust Street, Elizabethtown, IL 62931.			
McCracken County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1144			
Arnold Branch (backwater effects from Ohio River).	From the confluence with Blizzards Ponds Drainage Ditch to approximately 0.7 mile upstream of the Blizzards Ponds Drainage Canal.	+341	Unincorporated Areas of McCracken County.
Bayou Creek (backwater effects from Ohio River).	From the confluence with the Ohio River to approximately 1.0 mile downstream of Ogden Landing Road.	+336	Unincorporated Areas of McCracken County.
Blizzards Ponds Drainage Canal (backwater effects from Ohio River).	From the confluence with West Fork Clarks River to approximately 275 feet upstream of Husband Road.	+341	Unincorporated Areas of McCracken County.
Camp Creek (backwater effects from Ohio River).	From the confluence with West Fork Clarks River to approximately 0.5 mile downstream of KY–348.	+341	Unincorporated Areas of McCracken County.
Clarks River (backwater effects from Ohio River).	From the confluence with the Ohio River to approximately 0.7 mile upstream of KY–787.	+341	Unincorporated Areas of McCracken County.
Crooked Creek	At the confluence with Perkins Creek	+363	Unincorporated Areas of McCracken County.
	Approximately 400 feet upstream of U.S. Route 62	+402	
Cross Creek	Just upstream of the Illinois Central Railroad Yard	+331	Unincorporated Areas of McCracken County.
	Approximately 345 feet upstream of South 24th Street	+341	
Deer Lick Creek (backwater effects from Ohio River).	From the confluence with the Ohio River to approximately 2.9 miles upstream of the confluence with the Ohio River.	+336	Unincorporated Areas of McCracken County.
Horse Branch (backwater effects from Ohio River).	From the confluence with the Clarks River to approximately 85 feet downstream of Georgia Street South.	+341	Unincorporated Areas of McCracken County.
Island Creek Tributary 6.1 (backwater effects from Island Creek).	From the confluence with Island Creek to approximately 800 feet downstream of I–24.	+336	Unincorporated Areas of McCracken County.
Little Bayou Creek (backwater effects from Ohio River).	From the confluence with Bayou Creek to approximately 2.3 miles downstream of Ogden Landing Road.	+336	Unincorporated Areas of McCracken County.
Little Massac Creek (backwater effects from West Fork Massac Creek).	From the confluence with West Fork Massac Creek to approximately 1,000 feet upstream of the confluence with West Fork Massac Creek.	+378	Unincorporated Areas of McCracken County.
Middle Fork Massac Creek	Approximately 1,800 feet upstream of the confluence with Massac Creek.	+352	City of Paducah, Unincorporated Areas of McCracken County.
	Approximately 1,700 feet upstream of McCracken Boulevard.	+354	
Nasty Creek (backwater effects from Ohio River).	From the confluence with Newtons Creek I to approximately 0.6 mile upstream of Grief Road.	+335	Unincorporated Areas of McCracken County.
Newtons Creek I (backwater effects from Ohio River).	From the confluence with the Ohio River to approximately 0.7 mile upstream of Grief Road.	+335	Unincorporated Areas of McCracken County.
Ohio River	Approximately 1,700 feet downstream of the confluence with Redstone Creek.	+334	City of Paducah, Unincorporated Areas of McCracken County.
	Approximately 2.0 miles upstream of the confluence with the Tennessee River.	+340	
Perkins Creek	At the confluence with the Ohio River	+339	City of Paducah, Unincorporated Areas of McCracken County.
	Approximately 0.5 mile upstream of Blandville Road	+399	
Perkins Creek Tributary 4 (backwater effects from Ohio River).	From the confluence with Perkins Creek to approximately 80 feet downstream of U.S. Route 60.	+339	City of Paducah, Unincorporated Areas of McCracken County.
Redstone Creek (backwater effects from Ohio River).	From the confluence with Redstone Creek Tributary 5 to approximately 0.6 mile upstream of the confluence with Redstone Creek Tributary 5.	+335	Unincorporated Areas of McCracken County.
Redstone Creek Tributary 5 (backwater effects from Ohio River).	From the confluence with Redstone Creek to approximately 0.5 mile upstream of the confluence with Redstone Creek.	+335	Unincorporated Areas of McCracken County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Tennessee River	At the confluence with the Ohio River	+340	City of Paducah, Unincorporated Areas of McCracken County.
	Approximately 3.0 miles upstream of U.S. Route 60	+341	
West Fork Clarks River (backwater effects from Ohio River).	From the confluence with Clarks River to approximately 3.7 miles upstream of the confluence with Camp Creek at the county boundary.	+341	Unincorporated Areas of McCracken County.
West Fork Massac Creek (backwater effects from Ohio River).	From the confluence with Massac Creek to approximately 2,000 feet upstream of Wilmington Road.	+338	Unincorporated Areas of McCracken County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Paducah
Maps are available for inspection at City Hall, 300 South 5th Street, Paducah, KY 42002.

Unincorporated Areas of McCracken County
Maps are available for inspection at the McCracken County Courthouse, 301 South 6th Street, Paducah, KY 42003.

Clearfield County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1100

Clear Run	Approximately 580 feet upstream of U.S. Route 219	+1405	City of DuBois.
	Approximately 220 feet upstream of Juniata Street	+1420	
Laurel Run No. 1	Approximately 2,690 feet downstream of the confluence with Laurel Run Tributary A.	+1467	Township of Boggs.
	Approximately 2,625 feet downstream of the confluence with Laurel Run Tributary A.	+1467	
Pentz Run	Approximately 435 feet downstream of U.S. Route 219	+1409	Township of Sandy.
	Approximately 360 feet downstream of U.S. Route 219	+1410	
Pentz Run Tributary	Approximately 195 feet upstream of the confluence with Pentz Run.	+1410	Township of Sandy.
	Approximately 125 feet downstream of Forest Avenue	+1412	
West Branch Susquehanna River.	Approximately 4,485 feet downstream of U.S. Route 219	+1323	Township of Burnside.
	Approximately 2,275 feet downstream of U.S. Route 219	+1325	
	Approximately 1,910 feet downstream of the confluence with Rock Run No. 2.	+1332	
	Approximately 1,475 feet downstream of the confluence with Rock Run No. 2.	+1333	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of DuBois
Maps are available for inspection at 16 West Scribner Avenue, DuBois, PA 15801.

Township of Boggs
Maps are available for inspection at 150 Blue Ball Road, West Decatur, PA 16878.

Township of Burnside
Maps are available for inspection at 2447 Ridge Road, Westover, PA 16692.

Township of Sandy
Maps are available for inspection at 1094 Chestnut Avenue, DuBois, PA 15801.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 17, 2011.

Sandra K. Knight,

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

[FR Doc. 2011–28538 Filed 11–2–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 11–118]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Interim rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Structure and Practices of the Video Relay Service Program,* Second Report and Order and Order (*Second Report and Order and Order*). The information collection requirements were approved on October 20, 2011 by OMB.

DATES: The amendments to 47 CFR 64.606(a)(2)(v) and (g)(2), published at 76 FR 47476, August 5, 2011, are effective November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 559–5158 (voice and videophone), or *email: Gregory.Hlibok@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that, on October 20, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 64.606(a)(2)(v) and (g)(2). The Commission publishes this notice as an announcement of the effective date of the rules. See, In the Matter of Structure and Practices of the Video Relay Service Program, CG Docket No. 10–51, FCC 11–118, published at 76 FR 47476, August 5, 2011. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1160, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on October 20, 2011, for the information collection requirements contained in the Commission's rules at 47 CFR 64.606(a)(2)(v) and (g)(2).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current valid OMB Control Number. The OMB Control Number is 3060–1160.

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

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

OMB Control Number: 3060–1160.

OMB Approval Date: October 20, 2011.

OMB Expiration Date: April 30, 2012.

Title: Structure and Practices of the Video Relay Service Program, Second Report and Order and Order, CG Docket No. 10–51.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 31 respondents; 53 responses.

Estimated Time per Response: .017 (1 minute) to .50 hours (30 minutes).

Frequency of Response: Annual and one-time reporting requirements; and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 6 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On July 28, 2011 the Commission released *Second Report and Order and Order* FCC 11–118, published at 76 FR 47476, August 5, 2011, adopting final and interim rules—containing information collection requirements—designed to prevent fraud and abuse, and ensure that the Internet-based forms of Telecommunications Relay Services (iTRS) is being offered in compliance with all of the Commission's rules and orders. Specifically, the interim rules, described in A. and B. below, require that applicants and providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under §§ 64.606(a)(2) and 64.606(g) of the Commission's rules are truthful, accurate, and complete. The final rules, described in C. and D. below, are designed to enhance disclosures to iTRS consumers so that they are better aware of service terminations or temporary cessations.

Below are the information collection requirements contained in the *Second Report and Order and Order:*

A. Applicant Certifying Under Penalty of Perjury for Certification Application

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for iTRS certification with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification for eligibility to receive compensation from the Intestate TRS Fund, must certify under penalty of perjury that all application information required under the Commission's rules and orders has been provided and that all statements of fact, as well as all documentation contained in the application submission, are true, accurate, and complete.

B. Certified Provider Certifying Under Penalty of Perjury for Annual Compliance Filings

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an iTRS provider

with first hand knowledge of the accuracy and completeness of the information provided, when submitting an annual compliance report under paragraph (g) of § 64.606 of the Commission's rules, must certify under penalty of perjury that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in the annual compliance report submission, are true, accurate, and complete.

C. Notification of Service Cessation

The applicant for certification must give its customers at least 30 days notice that it will no longer provide service should the Commission determine that the applicant's certification application does not qualify for certification under paragraph (a)(2) of § 64.606 of the Commission's rules.

D. Notification on Web Site

The provider must provide notification of temporary service outages to consumers on an accessible Web site, and the provider must ensure that the information regarding service status is updated on its Web site in a timely manner.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–28449 Filed 11–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–140; RM–11683, DA 11–1735]

Television Broadcasting Services; Panama City, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Gray Television Licensee, LLC (''Gray''), the licensee of WJHG–TV, channel 7, Panama City, Florida, requesting the substitution of channel 18 for channel 7 at Panama City. Gray believes it is best to move to a UHF channel after two power increases and numerous attempts to resolve viewers' reception complaints. The channel substitution will serve the public interest by resolving significant over-the-air reception problems in certain areas of WJHG's predicted service area.

DATES: This rule is effective December 5, 2011.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 11–140, adopted October 18, 2011, and released October 19, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–(800) 478–3160 or via the company's Web site, *http://www.bcipweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

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

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final Rule

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Florida, is amended by removing channel 7 and adding channel 18 at Panama City.

[FR Doc. 2011–28454 Filed 11–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 79

[MB Docket No. 11–43; FCC 11–126]

Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of September 8, 2011, a document concerning implementation of the Video Description elements of the Twenty-First Century Communications and Video Accessibility Act of 2010. Inadvertently the Compliance date was listed as October 1, 2012. This document corrects the Compliance date to reflect the item and rules as adopted and published, which require compliance beginning on July 1, 2012. It also adds a paragraph which was included in the Proposed Rules in this proceeding but inadvertently omitted from the Final Rules.

DATES: *Effective on:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Lyle Elder, *Lyle.Elder@fcc.gov* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of September 8, 2011 (76 FR 55585), in which the Compliance date listed in the **DATES** section of the preamble was incorrect and from which a rule paragraph was missing. This technical amendment revises the Compliance date section of the preamble to reflect the text of the item and the rules as published. It also adds a rules paragraph that was included in

the Proposed Rules but inadvertently omitted from the Final Rules, and revises adjacent rules to reflect this addition. In rule FR Doc. 2011–22878 published on September 8, 2011 (76 FR 55585), make the following two corrections. First, on page 55585, in the second column, revise the ''*Compliance date*'' line to read ''*Compliance date:* July 1, 2012.'' Secondly, on page 55605, in the third column, revise paragraphs 79.3(e)(1)(iv) and (v) and add paragraph (vi).

List of Subjects in 47 CFR Part 79

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

Accordingly, 47 CFR part 79 is corrected by making the following correcting amendments:

PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613.

■ 2. In § 79.3, paragraphs (e)(1)(iv) and (v) are revised and paragraph (e)(1)(vi) is added to read as follows:

§ 79.3 Video description of video programming.

* * * * *

(e) * * *

(1) * * *

(iv) The specific relief or satisfaction sought by the complainant;

(v) The complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, or some other method that would best accommodate the complainant's disability); and

(vi) A certification that the complainant attempted in good faith to resolve the dispute with the broadcast station or MVPD against whom the complaint is alleged.

* * * * *

[FR Doc. 2011–28450 Filed 11–2–11; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 76, No. 213
Thursday, November 3, 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 THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–146537–06]

RIN 1545–BG08

Income of Foreign Governments and International Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations that provide guidance relating to the taxation of the income of foreign governments from investments in the United States under section 892 of the Internal Revenue Code of 1986 (Code). The regulations will affect foreign governments that derive income from sources within the United States.

DATES: Written or electronic comments and requests for a public hearing must be received by February 1, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–146537–06), Room 5205, Internal Revenue Service, PO 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–146537–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–146537–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David A. Juster, (202) 622–3850 (not a toll-free number); concerning submission of comments, contact Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review and approval under OMB approval number 1545–1053 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 3, 2012. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.892–5(a)(2)(ii)(B) and 1.892–5(a)(2)(iv). This information is required to determine if taxpayers qualify for exemption from tax under section 892. The collection of information is voluntary to obtain a benefit. The likely respondents are foreign governments.

Estimated total annual reporting burden: 975 hours.

Estimated average annual burden hours per respondent: 5 hours.

Estimated number of respondents: 195.

Estimated annual frequency of responses: 1.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains proposed amendments to 26 CFR part 1 and to 26 CFR part 602. On June 27, 1988, temporary regulations under section 892 (TD 8211, 53 FR 24060) (1988 temporary regulations) with a cross-reference notice of proposed rulemaking (53 FR 24100) were published in the **Federal Register** to provide guidance concerning the taxation of income of foreign governments and international organizations from investments in the United States. The proposed regulations contained herein supplement the cross-referenced notice of proposed rulemaking to provide additional guidance for determining when a foreign government's investment income is exempt from U.S. taxation.

Explanation of Provisions

The Treasury Department and the IRS have recently received numerous written comments on the 1988 temporary regulations. The proposed regulations are issued in response to those comments.

Treatment of Controlled Entities

Section 892 exempts from U.S. income taxation certain qualified investment income derived by a foreign government. Section 1.892–2T defines the term foreign government to mean only the integral parts or controlled entities of a foreign sovereign. The exemption from U.S. income tax under section 892 does not apply to income (1) Derived from the conduct of any commercial activity, (2) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity, or (3) derived from the disposition of any interest in a controlled commercial entity. Section 892(a)(2)(B) defines a controlled commercial entity as an entity owned by the foreign government that meets certain ownership or control thresholds and that is engaged in commercial activities anywhere in the

world. Accordingly, an integral part of a foreign sovereign that derives income from both qualified investments and from the conduct of commercial activity is eligible to claim the section 892 exemption with respect to the income from qualified investments, but not with respect to the income derived from the conduct of commercial activity. In contrast, if a controlled entity (as defined in § 1.892–2T(a)(3)) engages in commercial activities anywhere in the world, it is treated as a controlled commercial entity, and none of its income (including income from otherwise qualified investments) qualifies for exemption from tax under section 892. In addition, none of the income derived from the controlled entity (*e.g.,* dividends), including the portion attributable to qualified investments of the controlled entity, will be eligible for the section 892 exemption. Several comments raised concerns that this so-called ''all or nothing'' rule represents an unnecessary administrative and operational burden for foreign governments and a trap for unwary foreign governments that inadvertently conduct a small level of commercial activity. These comments have requested that the Treasury Department and the IRS revise § 1.892–5T(a) to provide for a de minimis exception under which an entity would not be treated as a controlled commercial entity as a result of certain inadvertent commercial activity.

In response to these comments, the proposed regulations at § 1.892–5(a)(2) provide that an entity will not be considered to engage in commercial activities if it conducts only inadvertent commercial activity. Commercial activity will be treated as inadvertent commercial activity only if: (1) The failure to avoid conducting the commercial activity is reasonable; (2) the commercial activity is promptly cured; and (3) certain record maintenance requirements are met. However, none of the income derived from such inadvertent commercial activity will qualify for exemption from tax under section 892.

In determining whether an entity's failure to avoid conducting a particular commercial activity is reasonable, due regard will be given to the number of commercial activities conducted during the taxable year, as well as the amount of income earned from, and assets used in, the conduct of the commercial activity in relationship to the entity's total income and assets. However, a failure to avoid conducting commercial activity will not be considered reasonable unless adequate written policies and operational procedures are in place to monitor the entity's worldwide activities. The proposed regulations include a safe harbor at § 1.892–5(a)(2)(ii)(C) under which, provided that there are adequate written policies and operational procedures in place to monitor the entity's worldwide activities, the controlled entity's failure to avoid the conduct of commercial activity during a taxable year will be considered reasonable if: (1) The value of the assets used in, or held for use in, the activity does not exceed five percent of the total value of the assets reflected on the entity's balance sheet for the taxable year as prepared for financial accounting purposes; and (2) the income earned by the entity from the commercial activity does not exceed five percent of the entity's gross income as reflected on its income statement for the taxable year as prepared for financial accounting purposes.

Comments also requested further guidance on the duration of a determination that an entity is a controlled commercial entity. In response to these comments, the proposed regulations at § 1.892–5(a)(3) provide that the determination of whether an entity is a controlled commercial entity within the meaning of section 892(a)(2)(B) will be made on an annual basis. Accordingly, an entity will not be considered a controlled commercial entity for a taxable year solely because the entity engaged in commercial activities in a prior taxable year.

Definition of Commercial Activity

Section 1.892–4T of the 1988 temporary regulations provides rules for determining whether income is derived from the conduct of a commercial activity, and specifically identifies certain activities that are not commercial, including certain investments, trading activities, cultural events, non-profit activities, and governmental functions. Several comments have expressed uncertainty about the applicable U.S. standard for determining when an activity will be considered a commercial activity, a non-profit activity, or governmental function for purposes of section 892 and § 1.892–4T.

Section 1.892–4(d) of the proposed regulations restates the general rule adopted in the 1988 temporary regulations that, subject to certain enumerated exceptions, all activities ordinarily conducted for the current or future production of income or gain are commercial activities. Section 1.892–4(d) of the proposed regulations further provides that only the nature of an activity, not the purpose or motivation for conducting the activity, is determinative of whether the activity is a commercial activity. This standard also applies for purposes of determining whether an activity is characterized as a non-profit activity or governmental function under § 1.892–4T(c)(3) and (c)(4). In addition, § 1.892–4(d) of the proposed regulations clarifies the rule in the 1988 temporary regulations by providing that an activity may be considered a commercial activity even if the activity does not constitute a trade or business for purposes of section 162 or does not constitute (or would not constitute if undertaken in the United States) the conduct of a trade or business in the United States for purposes of section 864(b).

Section 1.892–4T(c) lists certain activities that will not be considered commercial activities. One such activity is investments in financial instruments, as defined in § 1.892–3T(a)(4), which, if held in the execution of governmental financial or monetary policy, are not commercial activities for purposes of section 892. Several comments have requested that the condition that financial instruments be ''held in the execution of governmental financial or monetary policy'' be eliminated to more closely conform the treatment of investments in financial instruments, including derivatives, with investments in physical stocks and securities, which under the 1988 temporary regulations generally are not commercial activities regardless of whether they are held in the execution of governmental financial or monetary policy. Section 1.892–4(e)(1)(i) of the proposed regulations modifies the rules in § 1.892–4T(c)(1)(i) by providing that investments in financial instruments will not be treated as commercial activities for purposes of section 892, irrespective of whether such financial instruments are held in the execution of governmental financial or monetary policy. In addition, § 1.892–4(e)(1)(ii) of the proposed regulations expands the existing exception in § 1.892–4T(c)(1)(ii) from commercial activity for trading of stocks, securities, and commodities to include financial instruments, without regard to whether such financial instruments are held in the execution of governmental financial or monetary policy. These revisions address only the definition of commercial activity for purposes of determining whether a government will be considered to derive income from the conduct of a commercial activity, or whether an entity will be considered to be engaged in commercial activities. They do not address whether income from activities

that are not commercial activities will be exempt from tax under section 892. Pursuant to § 1.892–3T(a), only income derived from investments in financial instruments held in the execution of governmental financial or monetary policy will qualify for exemption from tax under section 892.

Comments have requested clarification as to whether an entity that disposes of a United States real property interest (USRPI) as defined in section 897(c) will be deemed to be engaged in commercial activities solely by reason of this disposition. Section 897(a)(1) requires that a nonresident alien or foreign corporation take into account gain or loss from the disposition of a USRPI as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with that trade or business. The Treasury Department and the IRS believe that an entity that only holds passive investments and is not otherwise engaged in commercial activities should not be deemed to be engaged in commercial activities solely by reason of the operation of section 897(a)(1). Accordingly, § 1.892–4(e)(1)(iv) of the proposed regulations provides that a disposition, including a deemed disposition under section 897(h)(1), of a USRPI, by itself, does not constitute the conduct of a commercial activity. However, as provided in § 1.892–3T(a), the income derived from the disposition of the USRPI described in section 897(c)(1)(A)(i) shall in no event qualify for the exemption from tax under section 892.

After the 1988 temporary regulations were published, section 892(a)(2)(A) was amended by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law No. 100–647, 102 Stat. 3342 to provide that income derived from the disposition of any interest in a controlled commercial entity does not qualify for the exemption under section 892. The proposed regulations revised § 1.892–5(a) to reflect the amendment of section 892 by TAMRA.

Treatment of Partnerships

Section 1.892–5T(d)(3) provides a general rule that commercial activities of a partnership are attributable to its general and limited partners (''partnership attribution rule'') and provides a limited exception to this rule for partners of publicly traded partnerships (PTPs). Several comments have requested that the Treasury Department and the IRS modify the partnership attribution rule to provide that the activities of a partnership will not be attributed to a foreign government partner if that government: (i) Holds a minority interest, as a limited partner, in the partnership; and (ii) has no greater rights to participate in the management and conduct of the partnership's business than would a minority shareholder in a corporation conducting the same activities as the partnership. The comments assert that the partnership attribution rule causes many controlled entities of foreign sovereigns to forego making investments in foreign partnerships or other foreign entities that do not invest in the United States out of concern that such investments might cause those controlled entities to be treated as controlled commercial entities.

In response to these comments, § 1.892–5(d)(5)(iii) of the proposed regulations modifies the existing exception to the partnership attribution rule for PTP interests by providing a more general exception for limited partnership interests. Under this revised exception, an entity that is not otherwise engaged in commercial activities will not be treated as engaged in commercial activities solely because it holds an interest as a limited partner in a limited partnership, including a publicly traded partnership that qualifies as a limited partnership.

For this purpose, an interest as a limited partner in a limited partnership is defined as an interest in an entity classified as a partnership for federal tax purposes if the holder of the interest does not have rights to participate in the management and conduct of the partnership's business at any time during the partnership's taxable year under the law of the jurisdiction in which the partnership is organized or under the governing agreement. This definition of an interest as a limited partner in a limited partnership applies solely for purposes of this exception, and no inference is intended that the same definition would apply for any other provision of the Code making or requiring a distinction between a general partner and a limited partner.

Although the commercial activity of a limited partnership will not cause a controlled entity of a foreign sovereign limited partner meeting the requirements of the exception for limited partnerships to be engaged in commercial activities, the controlled entity partner's distributive share of partnership income attributable to such commercial activity will be considered to be derived from the conduct of commercial activity, and therefore will not be exempt from taxation under section 892. Additionally, in the case of a partnership that is a controlled commercial entity, no part of the foreign government partner's distributive share of partnership income will qualify for exemption from tax under section 892.

Comments also assert that disparity in tax treatment exists under the temporary regulations regarding foreign government trading activity described in § 1.892–4T(c)(1)(ii) because trading for a foreign government's own account does not constitute a commercial activity but no similar rule applies in the case of trading done by a partnership of which a foreign government is a partner. The comments note that this disparity is not generally present in determining whether an activity is a trade or business within the United States under section 864(b). See § 1.864–2(c)(2)(i) and (d)(2)(i). In response to these comments, § 1.892–5(d)(5)(ii) of the proposed regulations provides that an entity that is not otherwise engaged in commercial activities will not be considered to be engaged in commercial activities solely because it is a member of a partnership that effects transactions in stocks, bonds, other securities, commodities, or financial instruments for the partnership's own account. However, this exception does not apply in the case of a partnership that is a dealer in stocks, bonds, other securities, commodities, or financial instruments. For this purpose, whether a partnership is a dealer is determined under the principles of § 1.864–2(c)(2)(iv)(a).

Proposed Effective/Applicability Date

These regulations are proposed to apply on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For rules applicable to periods prior to the publication date, see the corresponding provisions in §§ 1.892–4T and 1.892–5T in the 1988 temporary regulations and in § 1.892–5(a) as issued under TD 9012 (August 1, 2002).

Reliance on Proposed Regulations

Taxpayers may rely on the proposed regulations until final regulations are issued.

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 has also 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 the proposed 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 Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments, that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed regulations 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 written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is David A. Juster of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. Other personnel from the Treasury Department and the IRS participated in developing the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority citation for parts 1 and 601 continues to read in part as follows:

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

Section 1.892–4 also issued under 26 U.S.C. 892(c). * * *

Par. 2. Section 1.892–4 is added to read as follows:

§ 1.892–4 Commercial activities.

(a) through (c) [Reserved]. For further guidance, see § 1.892–4T(a) through (c).

(d) *In general.* Except as provided in paragraph (e) of this section, all activities (whether conducted within or outside the United States) which are ordinarily conducted for the current or future production of income or gain are commercial activities. Only the nature of the activity, not the purpose or motivation for conducting the activity, is determinative of whether the activity is commercial in character. An activity may be considered a commercial activity even if such activity does not constitute a trade or business for purposes of section 162 or does not constitute (or would not constitute if undertaken in the United States) the conduct of a trade or business in the United States for purposes of section 864(b).

(e) *Activities that are not commercial*—(1) *Investments*—(i) *In general.* Subject to the provisions of paragraphs (e)(1)(ii) and (iii) of this section, the following are not commercial activities: investments in stocks, bonds, and other securities (as defined in § 1.892–3T(a)(3)); loans; investments in financial instruments (as defined in § 1.892–3T(a)(4)); the holding of net leases on real property; the holding of real property which is not producing income (other than on its sale or from an investment in net leases on real property); and the holding of bank deposits in banks. Transferring securities under a loan agreement which meets the requirements of section 1058 is an investment for purposes of this paragraph (e)(1)(i). An activity will not cease to be an investment solely because of the volume of transactions of that activity or because of other unrelated activities.

(ii) *Trading.* Effecting transactions in stocks, bonds, other securities (as defined in § 1.892–3T(a)(3)), commodities, or financial instruments (as defined in § 1.892–3T(a)(4)) for a foreign government's own account does not constitute a commercial activity regardless of whether such activity constitutes a trade or business for purposes of section 162 or constitutes (or would constitute if undertaken within the United States) the conduct of a trade or business in the United States for purposes of section 864(b). Such transactions are not commercial activities regardless of whether they are effected by the foreign government through its employees or through a broker, commission agent, custodian, or other independent agent and regardless of whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. Such transactions undertaken as a dealer (as determined under the principles of § 1.864–2(c)(2)(iv)(a)), however, constitute commercial activity. For purposes of this paragraph (e)(1)(ii), the term *commodities* means commodities of a kind customarily dealt in on an organized commodity exchange but only if the transaction is of a kind customarily consummated at such place.

(iii) *Banking, financing, etc.* Investments (including loans) made by a banking, financing, or similar business constitute commercial activities, even if the income derived from such investments is not considered to be income effectively connected with the active conduct of a banking, financing, or similar business in the U.S. by reason of the application of § 1.864–4(c)(5).

(iv) *Disposition of a U.S. real property interest.* A disposition (including a deemed disposition under section 897(h)(1)) of a U.S. real property interest (as defined in section 897(c)), by itself, does not constitute the conduct of a commercial activity. As described in § 1.892–3T(a), however, gain derived from a disposition of a U.S. real property interest defined in section 897(c)(1)(A)(i) will not qualify for exemption from tax under section 892.

(2) through (5) [Reserved]. For further guidance, see § 1.892–4T(c)(2) through (c)(5).

(f) *Effective/applicability date.* This section applies on the date the regulations are published as final regulations in the **Federal Register**. See § 1.892–4T for the rules that apply before the date the regulations are published as final regulations in the **Federal Register**.

Par. 3. Section 1.892–5 is revised to read as follows:

§ 1.892–5 Controlled commercial entity.

(a) *In general*—(1) *General rule and definition of term ''controlled commercial entity''.* Under section 892(a)(2)(A)(ii) and (a)(2)(A)(iii), the exemption generally applicable to a foreign government (as defined in § 1.892–2T) for income described in § 1.892–3T does not apply to income received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity, or to income derived from the disposition of any interest in a controlled commercial entity. For purposes of section 892 and the regulations thereunder, the term *entity* means and includes a corporation, a partnership, a trust (including a pension trust described in § 1.892–2T(c)), and an estate, and the term *controlled commercial entity* means any entity (including a controlled entity as defined in § 1.892–2T(a)(3)) engaged in commercial activities (as defined in

§§ 1.892–4 and 1.892–4T) (whether conducted within or outside the United States) if the government—

(i) Holds (directly or indirectly) any interest in such entity which (by value or voting power) is 50 percent or more of the total of such interests in such entity, or

(ii) Holds (directly or indirectly) any other interest in such entity which provides the foreign government with effective practical control of such entity.

(2) *Inadvertent commercial activity*—(i) *General rule.* For purposes of determining whether an entity is a controlled commercial entity for purposes of section 892(a)(2)(B) and paragraph (a)(1) of this section, an entity that conducts only inadvertent commercial activity will not be considered to be engaged in commercial activities. However, any income derived from such inadvertent commercial activity will not qualify for exemption from tax under section 892. Commercial activity of an entity will be treated as inadvertent commercial activity only if:

(A) Failure to avoid conducting the commercial activity is reasonable as described in paragraph (a)(2)(ii) of this section;

(B) The commercial activity is promptly cured as described in paragraph (a)(2)(iii) of this section; and

(C) The record maintenance requirements described in paragraph (a)(2)(iv) of this section are met.

(ii) *Reasonable failure to avoid commercial activity*—(A) *In general.* Subject to paragraphs (a)(2)(ii)(B) and (C) of this section, whether an entity's failure to prevent its worldwide activities from resulting in commercial activity is reasonable will be determined in light of all the facts and circumstances. Due regard will be given to the number of commercial activities conducted during the taxable year and in prior taxable years, as well as the amount of income earned from, and assets used in, the conduct of the commercial activities in relationship to the entity's total income and assets, respectively. For purposes of this paragraph (a)(2)(ii)(A) and paragraph (a)(2)(ii)(C) of this section, where a commercial activity conducted by a partnership is attributed under paragraph (d)(5)(i) of this section to an entity owning an interest in the partnership—

(*1*) Assets used in the conduct of the commercial activity by the partnership are treated as assets used in the conduct of commercial activity by the entity in proportion to the entity's interest in the partnership; and

(*2*) The entity's distributive share of the partnership's income from the conduct of the commercial activity shall be treated as income earned by the entity from the conduct of commercial activities.

(B) *Continuing due diligence requirement.* A failure to avoid commercial activity will not be considered reasonable unless there is continuing due diligence to prevent the entity from engaging in commercial activities within or outside the United States as evidenced by having adequate written policies and operational procedures in place to monitor the entity's worldwide activities. A failure to avoid commercial activity will not be considered reasonable if the management-level employees of the entity have not undertaken reasonable efforts to establish, follow, and enforce such written policies and operational procedures.

(C) *Safe Harbor.* Provided that adequate written policies and operational procedures are in place to monitor the entity's worldwide activities as required in paragraph (a)(2)(ii)(B) of this section, the entity's failure to avoid commercial activity during the taxable year will be considered reasonable if:

(*1*) The value of the assets used in, or held for use in, all commercial activity does not exceed five percent of the total value of the assets reflected on the entity's balance sheet for the taxable year as prepared for financial accounting purposes, and

(*2*) The income earned by the entity from commercial activity does not exceed five percent of the entity's gross income as reflected on its income statement for the taxable year as prepared for financial accounting purposes.

(iii) *Cure requirement.* A timely cure shall be considered to have been made if the entity discontinues the conduct of the commercial activity within 120 days of discovering the commercial activity. For example, if an entity that holds an interest as a general partner in a partnership discovers that the partnership is conducting commercial activity, the entity will satisfy the cure requirement if, within 120 days of discovering the commercial activity, the entity discontinues the conduct of the activity by divesting itself of its interest in the partnership (including by transferring its interest in the partnership to a related entity), or the partnership discontinues its conduct of commercial activity.

(iv) *Record maintenance.* Adequate records of each discovered commercial activity and the remedial action taken to cure that activity must be maintained. The records shall be retained so long as the contents thereof may become material in the administration of section 892.

(3) *Annual determination of controlled commercial entity status.* If an entity described in paragraph (a)(1)(i) or (ii) of this section engages in commercial activities at any time during a taxable year, the entity will be considered a controlled commercial entity for the entire taxable year. An entity not otherwise engaged in commercial activities during a taxable year will not be considered a controlled commercial entity for a taxable year even if the entity engaged in commercial activities in a prior taxable year.

(b) through (d)(4) [Reserved]. For further guidance, see § 1.892–5T(b) through (d)(4).

(5) *Partnerships*—(i) *General rule.* Except as provided in paragraph (d)(5)(ii) or (d)(5)(iii) of this section, the commercial activities of an entity classified as a partnership for federal tax purposes will be attributable to its partners for purposes of section 892. For example, if an entity described in paragraph (a)(1)(i) or (ii) of this section holds an interest as a general partner in a partnership that is engaged in commercial activities, the partnership's commercial activities will be attributed to that entity for purposes of determining if the entity is a controlled commercial entity within the meaning of section 892(a)(2)(B) and paragraph (a) of this section.

(ii) *Trading activity exception.* An entity not otherwise engaged in commercial activities will not be considered to be engaged in commercial activities solely because the entity is a member of a partnership (whether domestic or foreign) that effects transactions in stocks, bonds, other securities (as defined in § 1.892–3T(a)(3)), commodities (as defined in § 1.892–4(e)(1)(ii)), or financial instruments (as defined in § 1.892–3T(a)(4)) for the partnership's own account or solely because an employee of such partnership, or a broker, commission agent, custodian, or other agent, pursuant to discretionary authority granted by such partnership, effects such transactions for the account of the partnership. This exception shall not apply to any member in the case of a partnership that is a dealer in stocks, bonds, other securities, commodities, or financial instruments, as determined under the principles of § 1.864–2(c)(2)(iv)(a).

(iii) *Limited partner exception*—(A) *General rule.* An entity that is not otherwise engaged in commercial activities (including, for example, performing services for a partnership as

described in section 707(a) or section 707(c)) will not be deemed to be engaged in commercial activities solely because it holds an interest as a limited partner in a limited partnership. Nevertheless, pursuant to sections 875, 882, and 892(a)(2)(A)(i), a foreign government member's distributive share of partnership income will not be exempt from taxation under section 892 to the extent that the partnership derived such income from the conduct of a commercial activity. For example, where a controlled entity described in § 1.892–2T(a)(3) that is not otherwise engaged in commercial activities holds an interest as a limited partner in a limited partnership that is a dealer in stocks, bonds, other securities, commodities, or financial instruments in the United States, although the controlled entity partner will not be deemed to be engaged in commercial activities solely because of its interest in the limited partnership, its distributive share of partnership income derived from the partnership's activity as a dealer will not be exempt from tax under section 892 because it was derived from the conduct of a commercial activity.

(B) *Interest as a limited partner in a limited partnership.* Solely for purposes of paragraph (d)(5)(iii) of this section, an interest in an entity classified as a partnership for federal tax purposes shall be treated as an interest as a limited partner in a limited partnership if the holder of such interest does not have rights to participate in the management and conduct of the partnership's business at any time during the partnership's taxable year under the law of the jurisdiction in which the partnership is organized or under the governing agreement. Rights to participate in the management and conduct of a partnership's business do not include consent rights in the case of extraordinary events such as admission or expulsion of a general or limited partner, amendment of the partnership agreement, dissolution of the partnership, disposition of all or substantially all of the partnership's property outside of the ordinary course of the partnership's activities, merger, or conversion.

(iv) *Illustration.* The following example illustrates the application of this paragraph (d)(5):

Example 1. K, a controlled entity of a foreign sovereign, has investments in various stocks and bonds of United States corporations and in a 20% interest in Opco, a limited liability company that is classified as a partnership for federal tax purposes. Under the governing agreement of Opco, K has the authority to participate in the management and conduct of Opco's business. Opco has investments in various stocks and bonds of United States corporations and also owns and manages an office building in New York. Because K has authority to participate in the management and conduct of Opco's business, its interest in Opco is not a limited partner interest. Therefore, K will be deemed to be engaged in commercial activities because of attribution of Opco's commercial activity, even if K does not actually make management decisions with regard to Opco's commercial activity, the operation of the office building. Accordingly, K is a controlled commercial entity, and all of its income, including its distributive share of partnership income from its interest in Opco and its income from the stocks and bonds it owns directly, will not be exempt from tax under section 892.

Example 2. The facts are the same as in *Example 1,* except that Opco has hired a real estate management firm to lease offices and manage the office building. Notwithstanding the fact that an independent contractor is performing the activities, Opco will still be deemed to be engaged in commercial activities. Accordingly, K is a controlled commercial entity, and all of its income, including its distributive share of partnership income from its interest in Opco and its income from the stocks and bonds it owns directly, will not be exempt from tax under section 892.

Example 3. The facts are the same as in *Example 1,* except that K is a member that has no right to participate in the management and conduct of Opco's business. Assume further that K is not otherwise engaged in commercial activities. Under paragraph (d)(5)(iii) of this section, Opco's commercial activities will not be attributed to K. Accordingly, K will not be a controlled commercial entity, and its income derived from the stocks and bonds it owns directly and the portion of its distributive share of partnership income from its interest in Opco that is derived from stocks and bonds will be exempt from tax under section 892. The portion of K's distributive share of partnership income from its interest in Opco that is derived from the operation of the office building will not be exempt from tax under section 892 and § 1.892–3T(a)(1).

(e) *Effective/applicability date.* This section applies on the date these regulations are published as final regulations in the **Federal Register**. See § 1.892–5(a) as issued under TD 9012 (August 1, 2002) for rules that apply on or after January 14, 2002, and before the date these regulations are published as final regulations in the **Federal Register**. See § 1.892–5T(a) for rules that apply before January 14, 2002, and § 1.892–5T(b) through (d) for rules that apply before the date these regulations are published as final regulations in the **Federal Register**.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.892–5	1545–1053
* * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–28531 Filed 11–2–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–115, RM–11543; DA 11–1502]

Television Broadcasting Services; Fond du Lac, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission denies a petition for reconsideration of an August 12, 2009 Report and Order changing the allotted channel for station WWAZ–TV, Fond du Lac, Wisconsin, from channel 44 to channel 5. The petitioner stated that the staff, in granting the original channel change, cited erroneous loss-of-service figures. The petitioner further argues that the primary technical justification for creation of this loss area was not raised until the reply comment stage, and that the record further does not support the technical justification. The order finds that the staff requested a re-engineered proposal that would result in the replacement translators covering the projected analog loss area. The document finds that the re-engineered translators sufficiently address any loss of service, and further finds that the public interest is served by substituting channel 5 for channel 44 at Fond du Lac

because it permitted WLS–TV, an ABC network affiliate in Chicago, Illinois, to move from its post-transition channel 7 to channel 44, resulting in the restoration of ABC network service to numerous viewers that had lost service after the transition of WLS–TV to digital operations. Finally, the document notes that the petitioner's own engineer had recognized potential technical problems associated with WWAZ–TV's digital operations on channel 44.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Memorandum Opinion and Order, MB Docket No. 09–115, adopted September 6, 2011 by the Video Division of the Federal Communications Commission, and released September 8, 2011. For the reasons discussed above, the Federal Communications Commission denies the petition for reconsideration of an order changing the allotted channel for station WWAZ–TV, Fond du Lac, Wisconsin. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–(800) 478–3160 or via email *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). 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 (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

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

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 2011–28452 Filed 11–2–11; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 76, No. 213
Thursday, November 3, 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

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces two meetings of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: The meeting dates are November 14, 2011, from 11 a.m. until 12:30 p.m. and November 15, 2011, from 10:30 a.m. until 12 noon.

ADDRESSES: The meetings will be conducted in Webinar format entirely by telephone and Internet.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue SW., Washington, DC 20250; *Telephone* (202) 720–3817; *Fax* (202) 690–4265; *Email AC21@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The AC21 provides information and advice to the Secretary of Agriculture on topics related to the use of biotechnology in agriculture. Background information regarding the work and membership of the AC21 is available on the USDA Web site at *http://www.usda.gov/wps/portal/usda/usdahome?contentid=AC21Main.xml&contentidonly=true.*

The immediate work of the AC21 is to address the following two questions: (1) What types of compensation mechanisms, if any, would be appropriate to address economic losses by farmers in which the value of their crops is reduced by the unintended presence of GE material(s)? and (2) What would be necessary to implement such mechanisms? That is, what would be the eligibility standard for a loss and what tools and triggers (*e.g.,* tolerances, testing protocols, etc.) would be needed to verify and measure such losses and determine if claims are compensable?

The purpose of the two meetings is to provide background information in a Webinar format to AC21 members on existing USDA programs that may serve as examples to help in the development of potential compensation mechanisms for the committee to consider, should it deem compensation mechanisms appropriate to recommend. During the November 14, 2011, conference call, AC21 members will be briefed on, and have the opportunity to discuss, background information on USDA's crop insurance programs under the Risk Management Agency. During the November 15, 2011, conference call members will be briefed on, and have the opportunity to discuss, background information on the indemnification programs for perishable agricultural commodities under the Agricultural Marketing Service and for diseased livestock under the Animal and Plant Health Inspection Service.

Members of the public who wish to listen in to the November 14, 2011, meeting may view the presentations and listen to audio at *https://cc.readytalk.com/r/2bcp67fidhgq* or to dial in at Area Code (800) 705–8289. Members of the public who wish to listen in to the November 15, 2011, meeting may view the presentations and listen to audio at *https://cc.readytalk.com/r/jq96hzop0sp4* or dial in at Area Code (800) 698–5986. There will be an opportunity for the public to comment on this background material at the next in-person meeting of the AC21, which will be scheduled later. This notice of meeting agendas is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2 10).

Dated: October 26, 2011.

Yeshimebet Abebe,

Chief of Staff.

[FR Doc. 2011–28469 Filed 11–2–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

RIN 0524–AA43

Solicitation of Input From Stakeholders Regarding the Veterinary Medicine Loan Repayment Program (VMLRP)

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of request for stakeholder input.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is soliciting stakeholder input on the administration of the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3151a). The purpose of this program is for the U.S. Department of Agriculture (USDA) to enter into agreements with veterinarians under which the veterinarians agree to provide, for a specific period of time as identified in the agreement, veterinary services in veterinarian shortage situations. As part of the stakeholder input process, NIFA is inviting comments regarding the current procedures and processes in place for the VMLRP. Input collected will be used to modify and improve processes for subsequent calls of shortage situation nominations and request for applications.

DATES: Written comments are invited from interested individuals and organizations. All comments must be received by close of business on December 5, 2011, to be considered.

ADDRESSES: You may submit comments, identified by NIFA–2012–0001, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: vmlrp@nifa.usda.gov. Include NIFA–2012–0001 in the subject line of the message.

Fax: (202) 720–6486.

Mail: Paper, disk or CD–ROM submissions should be submitted to VMLRP, Policy and Oversight Division, National Institute of Food and Agriculture, U.S. Department of Agriculture; STOP 2299, 1400

Independence Avenue SW., Washington, DC 20250–2299.

Hand Delivery/Courier: VMLRP; Policy and Oversight Division, National Institute of Food and Agriculture, U.S. Department of Agriculture, Room 2308, Waterfront Centre, 800 9th Street SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and NIFA–2012–0001. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Matthew Lockhart, Senior Policy Specialist; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue SW., Washington, DC 20250–2299; *Voice:* (202) 570–7410; *Email: mlockhart@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

The VMLRP helps qualified veterinarians offset a significant portion of the debt incurred in pursuit of their veterinary medicine degrees in return for their service in certain high-priority veterinary shortage situations. NIFA will enter into educational loan repayment agreements with veterinarians who agree to provide veterinary services in veterinarian shortage situations for a determined period of time. NIFA may repay up to $25,000 of a veterinarian's student loan debt per year if the veterinarian commits to at least three years to provide veterinary services in a designated veterinary shortage area. Loan repayment benefits are limited to payments of the principal and interest on government and commercial loans received for the attendance at an accredited college of veterinary medicine that result in a degree of Doctor of Veterinary Medicine or the equivalent.

In December 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture (secretary) to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. In November 2005, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97), appropriated $495,000 to implement the VMLRP and represented the first time funds had been appropriated for this program. In February 2007, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5), appropriated an additional $495,000 for support of the program, and in December 2007, the Consolidated Appropriations Act, 2008 (Pub. L. 110–161), appropriated an additional $868,875 for support of this program, and in March 2009, the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) was enacted, providing an additional $2,950,000, for the VMLRP, and in October 2009, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010 (Pub. L. 111–80) appropriated another $4,800,000 for the VMLRP. On April 15, 2011, the President signed into law, Pub. L. 112–10, Department of Defense and Full-Year Continuing Appropriations Act, 2011, which after a .2% rescission, appropriated an additional $4,790,400 for the VMLRP.

On October 1, 2009, CSREES became the NIFA as mandated by the Food, Conservation, and Energy Act of 2008, section 7511(f). Accordingly, the authority to administer the VMLRP transferred from CSREES to NIFA.

In FY 2010, VMLRP announced its first funding opportunity and received 260 applications from which NIFA issued 53 VMLRP awards totaling $5,186,000. In FY 2011, VMLRP opened its second funding opportunity and received 159 applications from which NIFA has made 80 VMLRP award offers totaling $7,708,000. Each award offer is contingent upon submission of a signed contract, thereby executing the service agreement between the veterinarian and NIFA. Funding for future years is based on annual appropriations and balances, if any, remaining from prior years.

Section 7105 of the FCEA amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) Geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian, to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for the attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent. This program is not authorized to provide repayments for any government or commercial loans incurred during the pursuit of another degree, such as an associate or bachelor degree. Loans eligible for repayment include educational loans made for one or more of the following: Loans for tuition expenses; other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and reasonable living expenses as determined by the Secretary. In addition, the Secretary is directed to make such additional payments to participants as the Secretary determines appropriate for the purpose of providing reimbursements to participants for individual tax liability resulting from participation in this program. The Secretary delegated the authority to carry out this program to NIFA.

NIFA is inviting stakeholder comments to use in improving the administration of the VMLRP. Written comments and suggestions on issues may be submitted to the NIFA Docket Clerk at the address above.

Done in Washington, DC, this 27th day of October 2011.

Chavonda Jacobs-Young,

Acting Director, National Institute of Food and Agriculture.

[FR Doc. 2011–28508 Filed 11–2–11; 8:45 am]

BILLING CODE 3410–22–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular Board meeting in Washington, DC, Wednesday, November 9, 2011, from 1:30–3 p.m.

DATES: Wednesday, November 9, 2011, 1:30–3 p.m.

ADDRESSES: This meeting will be held at the Access Board Conference Room, 1331 F Street NW., suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, November 9, 2011, the Access Board will consider the following agenda items:

- Approval of the draft July 13, 2011 meeting minutes
- Planning and Evaluation Committee Report
- Ad Hoc Committee Reports
  - Information and Communications Technologies—advance notice of proposed rulemaking (vote)
  - Medical Diagnostic Equipment—notice of proposed rulemaking (vote)
- Executive Director's Report
- Public Comment, Open Topics

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *http://www.access-board.gov/about/policies/fragrance.htm* for more information).

David M. Capozzi,

Executive Director.

[FR Doc. 2011–28540 Filed 11–2–11; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on November 17, 2011, 10 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introductions.
2. Remarks from Bureau of Industry and Security senior management.
3. Presentation from DuPont on impact of export controls.
4. Report on Composite Working Group and other working groups.
5. Discussion of proposed changes to Select Agent List and program as published in the October 3, 2011 **Federal Register**.
6. Report on regime-based activities.
7. Public comments and New Business.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ l0(a)(I) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than November 10, 2011.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 21, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 31, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–28534 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Extension of Time Limit for Partial Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Lingjun Wang, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–0780 or (202) 482–2316, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2010, the Department of Commerce (Department) published a notice of initiation of an administrative review of fresh garlic from the People's Republic of China covering the period November 1, 2009, through October 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010). On July 15, 2011, the Department published a notice in the **Federal Register** that extended the time limit to issue the preliminary results by 100 days. *See Fresh Garlic From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 41795 (July 15, 2011). On October 20, 2011, the Department issued partial preliminary results covering the PRC-wide entity which included seven companies on which a review was initiated, and fourteen companies that certified no shipments. *See Fresh Garlic From the People's Republic of China: Partial Preliminary Results, Rescission of, and Intent To Rescind, in Part, the 2009–2010 Administrative Review,* 76 FR 65172 (October 20, 2011) (*First Partial Preliminary Results*). The partial preliminary results covering seven companies on which the review was initiated but who were not covered by the *First Partial Preliminary Results* are currently due no later than November 10, 2011.

Extension of Time Limit for Partial Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires

the Department to issue its preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department determines that it is not practicable to complete the preliminary results for the remaining companies covered by this review within the current time limit. Specifically, the Department requires additional time to analyze supplemental questionnaire responses, and to evaluate the most appropriate surrogate values to use in this segment of the proceeding. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 345 days to 365 days. The preliminary results for the remaining seven companies will now be due no later than November 30, 2011. Unless extended, the final results continue to be due no later than 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: October 28, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–28535 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that certain steel nails (nails) from the United Arab Emirates (UAE) are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Michael A. Romani, 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) 482–0665 and (202) 482–0198, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, Mid Continent Nail Corporation (the petitioner) filed an antidumping petition concerning imports of nails from the UAE. *See* the Petition for the Imposition of Antidumping Duties on Certain Steel Nails from the United Arab Emirates, dated March 31, 2011 (the petition).

On April 27, 2011, the Department initiated the antidumping duty investigation on nails from the UAE. *See Certain Steel Nails From the United Arab Emirates: Initiation of Antidumping Duty Investigation,* 76 FR 23559 (April 27, 2011) (*Initiation Notice*).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the date of publication of the *Initiation Notice. See Initiation Notice,* 76 FR at 23560. We received no comments from interested parties concerning product coverage. The Department also set aside a period of time for parties to comment on product characteristics for use in the antidumping duty questionnaire. *See Initiation Notice,* 76 FR at 23560. On May 10, 2011, we received comments from the petitioner. On May 17, 2011, we received comments from Precision Fasteners LLC (Precision Fasteners), a UAE producer and exporter of subject merchandise. On May 24, 2011, we received additional comments from the petitioner. After reviewing all comments, we have adopted the characteristics and hierarchy as explained in the ''Product Comparisons'' section of this notice, below.

On May 19, 2011, we selected Dubai Wire FZE (Dubai Wire), Precision Fasteners, and Tech Fast International Ltd. (Tech Fast), as mandatory respondents in this investigation. *See* the ''Selection of Respondents'' section of this notice, below.

On May 20, 2011, the International Trade Commission (ITC) published its affirmative preliminary determination that there is a reasonable indication that imports of nails from the UAE are materially injuring the U.S. industry, and the ITC notified the Department of its finding. *See Certain Steel Nails From the United Arab Emirates; Determination,* Investigation No. 731–TA–1185 (Preliminary), 76 FR 29266 (May 20, 2011).

On May 26, 2011, we issued the antidumping questionnaire to Dubai Wire, Precision Fasteners, and Tech Fast. We received questionnaire responses from Dubai Wire and Precision Fasteners. We did not receive a questionnaire response from Tech Fast.

On July 20, 2011, based on a timely request from the petitioner, we extended the deadline for alleging targeted dumping.

On August 8, 2011, the petitioner filed allegations of targeted dumping by Dubai Wire and Precision Fasteners. *See* the ''Allegation of Targeted Dumping'' section below.

On August 8, 2011, the petitioner requested that the Department postpone its preliminary determination by 50 days. In accordance with section 733(c)(1)(A) of the Act, we postponed our preliminary determination by 50 days. *See Certain Steel Nails From the United Arab Emirates: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 76 FR 52313 (August 22, 2011).

On October 4, 2011, Dubai Wire and Precision Fasteners requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month to a six-month period.

On October 13, 2011, the petitioner submitted comments with respect to Dubai Wire and Precision Fasteners for consideration in the preliminary determination. On October 18, 2011, Dubai Wire submitted rebuttal comments. On October 21, 2011, Precision Fasteners submitted rebuttal comments. On October 24, 2011, the petitioner submitted additional

comments with respect to Dubai Wire. On October 25, 2011, Precision Fasteners submitted additional comments concerning targeted dumping allegation.

Period of Investigation

The POI is January 1, 2010, through December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2011. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are nails from the UAE. For a full description of the scope of the investigation, as set forth in the *Initiation Notice,* please see the ''Scope of the Investigation'' in Appendix I of this notice.

Changes to the Scope of Investigation

For this preliminary determination we are clarifying the scope of investigation to conform with the decision in *Certain Steel Nails From the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 76 FR 22369 (April 21, 2011) (*China Nails CCR*) (unchanged in *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 76 FR 30101 (May 24, 2011)). The scope description in the *Initiation Notice* included language referring to the packaging characteristics of certain nails excluded from the scope. However, in *China Nails CCR,* we determined that the physical characteristics of the nails, and not the labeling, were determinative of their inclusion or exclusion from the scope. *See China Nails CCR,* 76 FR 22371. Accordingly, we are revising the scope of this investigation by removing the following language pertaining to three types of roofing nails that are excluded from the scope of the investigation, ''and whose packaging and packaging marking are clearly and prominently labeled 'Roofing' or 'Roof' nails.'' *See* Appendix II of this notice.

Additionally, for the preliminary determination, we are modifying the scope of the investigation to reflect the ASTM Standard F 1667 (2011 revision) rather than the 2005 revision because the 2011 revision describes additional types of roofing nails not provided for in the 2005 revision. Accordingly, for this preliminary determination, we have adopted the following revision to the scope language, ''Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.'' *See* Appendix II.

We invite interested parties to comment on these modifications to the scope of this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. The data on the record indicates that there are over 10 potential producers or exporters from the UAE that exported the subject merchandise to the United States during the POI. *See* letter to all interested parties dated May 2, 2011. In the *Initiation Notice* we stated that we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the Harmonized Tariff Schedule of the United States (HTSUS) numbers 7317.00.55, 7317.00.65, and 7317.00.75, the three categories most specific to subject merchandise, for entries made during the POI. *See Initiation Notice,* 76 FR 23563. We invited comments on CBP data and selection of respondents for individual examination. *Id.*

On May 2, 2011, we released the CBP data to all parties with access to information protected by administrative protective order. Based on our review of the CBP data and our consideration of the comments we received from Dubai Wire on May 5, 2011, and from the petitioner on May 9, 2011, we determined that we had the resources to examine three companies. Accordingly, we selected Dubai Wire, Precision Fasteners, and Tech Fast [1] for individual examination in this investigation. These companies are the three producers/exporters of subject merchandise that account for the largest volume of the subject merchandise imported during the POI that we can reasonably examine in accordance with section 777A(c)(2)(B) of the Act. *See* Memorandum to Christian Marsh entitled ''Certain Steel Nails from the United Arab Emirates: Selection of Respondents for Individual Examination'' dated May 19, 2011.

[1] Selected respondents are listed in alphabetical order.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Tech Fast.

A. Use of Facts Available

As indicated in the ''Background'' section above, Tech Fast did not respond to our questionnaire dated May 26, 2011. *See* memorandum dated October 18, 2011 (documenting our attempts to deliver the questionnaire to Tech Fast). As such, Tech Fast withheld information necessary to calculate a margin for its sales to the United States. Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

In this case, Tech Fast did not respond to our request for information, withheld information the Department requested, and significantly impeded the proceeding. Because Tech Fast failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to section 776(a) of the Act, we are relying upon facts otherwise available for Tech Fast's antidumping duty margin.

B. Application of Adverse Inferences for Facts Available

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in

selecting the facts otherwise available. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103–316, Vol. 1, 103d Cong. (1994) (SAA), explains that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870; and, *e.g., Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review,* 72 FR 69663 (December 10, 2007). Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan,* 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties,* 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (CAFC 2003). It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.

Although we provided Tech Fast with notice informing it of the consequences of its failure to respond fully to our antidumping questionnaire, Tech Fast refrained from participating in this investigation and has failed to provide any response to our request for information. This failure to respond indicates that Tech Fast has determined not to cooperate with our requests for information or to participate in this investigation. Tech Fast's decision not to participate in this investigation has precluded the Department from performing the necessary analysis and verification of Tech Fast's questionnaire responses required by section 782(i)(1) of the Act. Accordingly, the Department concludes that Tech Fast failed to cooperate to the best of its ability to comply with a request for information by the Department pursuant to section 776(b) of the Act.

Based on the above, the Department has preliminarily determined that Tech Fast has failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan,* 65 FR at 42986 (July 12, 2000) (where the Department applied total adverse facts available (AFA) where the respondent failed to respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See* also 19 CFR 351.308(c) and the SAA at 868–870. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Normally, it is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland,* 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland,* 70 FR 28279 (May 17, 2005)). The rates in the petition range from 61.54 percent to 184.41 percent. *See Initiation Notice* at 23563. Because the rates we preliminarily determined for cooperative respondents, Dubai Wire and Precision Fasteners, are 27.02 and 18.09, respectively, we have selected the petition rate of 61.54 percent. This rate achieves the purpose of applying an adverse inference, *i.e.,* it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. *See Gallant Ocean (Thailand) Co. v. United States, 602 F.3d 1319 (Fed. Cir. 2010).*

When using facts otherwise available, section 776(c) of the the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination. *See* Antidumping Investigation Initiation Checklist dated April 20, 2011 (Initiation Checklist), at 5 through 14. *See* also *Initiation Notice* at 23561–23563. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the Export Price (EP) and normal-value calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the EP and normal-value calculations

used in the petition to derive estimated margins. *Id.*

Based on our examination of the information, as discussed in detail in the Initiation Checklist and the *Initiation Notice,* we consider the petitioner's calculation of the EP and normal-value to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the margins in the petition are reliable for the purposes of this investigation.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

The rates in the petition reflect commercial practices of the nails industry and, as such, are relevant to Tech Fast. The courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry. *See, e.g., Ferro Union, Inc.* v. *United States,* 44 F. Supp. 2d 1310, 1334 (1999). Such consideration typically encompasses the commercial behavior of other respondents under investigation and the selected AFA rate is gauged against the margins we calculate for those respondents. Therefore, we compared the model-specific margins we calculated for Dubai Wire and Precision Fasteners for the POI to the petition rate of 61.54 percent, selected as AFA in this investigation. We found that the highest model-specific margins we calculated for Dubai Wire and Precision Fasteners in this investigation were higher than or within the range of the 61.54 percent margin alleged in the petition.

Specifically, after calculating the margin for Dubai Wire and Precision Fasteners as discussed in detail below, we examined individual model comparisons made by Dubai Wire and Precision Fasteners during the POI and the margins we determined on those model comparisons in order to determine whether the rate of 61.54 percent is probative. We found a number of model comparisons with dumping margins above the rate of 61.54 percent and a number of model comparisons with dumping margins within the range of 61.54 percent. See company-specific analysis memorandum, dated concurrently with this notice. Accordingly, the AFA rate is relevant as applied to Tech Fast for this investigation because it falls within the range of model-specific margins we calculated for Dubai Wire and Precision Fasteners in this investigation. A similar corroboration methodology has been upheld by the court. *See PAM, S.p.A.* v. *United States,* 582 F.3d 1336, 1340 (Fed. Cir. 2009). Further, it is consistent with our past practice. *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808, 41811 (July 19, 2010).

Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondent in this investigation, we have corroborated the AFA rate of 61.54 percent ''to the extent practicable'' as provided in section 776(c) of the Act. *See* also 19 CFR 351.308(d).

Therefore, with respect to Tech Fast, we have used, as AFA, the margin in the petition of 61.54 percent, as set forth in the notice of initiation. *See Initiation Notice* at 23563.

Affiliation and Collapsing

Section 771(33)(F) of the Act defines affiliated persons as two or more persons directly or indirectly controlling, controlled by, or under common control with any person. We find that, based on record evidence, Dubai Wire and Global Fasteners Limited (GFL), a producer of screws, are affiliated pursuant to section 771(33)(F) of the Act. Because our analysis of affiliation involves extensive use of business-proprietary information, for a detailed discussion, *see* Memorandum to Susan Kuhbach entitled ''Certain Steel Nails from the United Arab Emirates—Whether Collapsing of Affiliated Producers is Warranted,'' dated October 27, 2011 (Collapsing Evaluation Memo).

Section 351.401(f) of the Department's regulations outlines the criteria for collapsing (*i.e.,* treating as a single entity) affiliated producers for purposes of calculating a dumping margin. The regulations state that we will treat two or more affiliated producers as a single entity where (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and (2) we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the Department may consider the following factors: (i) The level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. *See* 19 CFR 351.401(f)(2).

With respect to the first criterion of 19 CFR 351.401(f), the information on the record indicates that GFL does not produce and/or have the potential to produce merchandise identical or similar to subject merchandise. Specifically, in producing screws, GFL's production processes and equipment are not similar to those used by Dubai Wire to produce nails. Thus, we find that substantial retooling of GFL's facilities would be required to change the companies' manufacturing priorities. *See* Collapsing Evaluation Memo. Because the first criteria of 19 CFR 351.401(f) was not established, we need not consider whether there is a significant potential for the manipulation of price or production.

With respect to Precision Fasteners, we find that, based on record evidence, it is not affiliated with Millennium Steel and Wire LLC. Because our analysis of affiliation involves extensive use of business-proprietary information, for a full discussion, *see* Precision Fasteners analysis memorandum.

Allegation of Targeted Dumping

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: (1) There is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

On August 8, 2011, the petitioner submitted allegations of targeted dumping with respect to Dubai Wire and Precision Fasteners, asserting that the Department should apply the average-to-transaction methodology to all reported U.S. sales in calculating the margins for these companies. In its allegations, the petitioner asserts that there are patterns of EPs for comparable merchandise that differ significantly among purchasers, regions, and periods of time. The petitioner relied on the Department's current version of the targeted-dumping test first introduced in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (Nails), and used more recently in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010) (OCTG).

Because our analysis includes business-proprietary information, for a full discussion see Memorandum to Christian Marsh entitled ''Less-Than-Fair-Value Investigation on Certain Steel Nails from the United Arab Emirates: Targeted Dumping—Dubai Wire FZE,'' dated October 27, 2011, and Memorandum to Christian Marsh entitled ''Less-Than-Fair-Value Investigation on Certain Steel Nails from the United Arab Emirates: Targeted Dumping—Precision Fasteners, LLC'' dated October 27, 2011 (Targeted-Dumping Memos).

A. Targeted-Dumping Test

We conducted customer, region, and time-period analyses of targeted dumping for both companies using the methodology we adopted in *Nails* as modified in *Bags,*[2] to correct a ministerial error, and as further modified in *Wood Flooring,*[3] to correct for additional ministerial errors.

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. *See* section 777A(d)(1)(B)(i) of the Act and *Nails.* In this test we made all price comparisons on the basis of identical merchandise (*i.e.,* by control number or CONNUM). The test procedures are the same for the customer, regional, and time-period allegations of targeted dumping. We based all of our targeted-dumping calculations on the U.S. net price which we determined for U.S. sales by Dubai Wire and Precision Fasteners in our standard margin calculations. For further discussion of the test and the results, see the Targeted-Dumping Memos.

As a result of our analysis, we preliminarily determine that there is a pattern of EPs for comparable merchandise that differ significantly among certain customers, regions, and time periods for Dubai Wire and Precision Fasteners in accordance with section 777A(d)(1)(B)(i) of the Act and our practice as discussed in *Nails.*

Dubai Wire submitted comments arguing that there was no targeted dumping. Dubai Wire's comments were filed a short period of time prior to the preliminary determination and were complex and extensive in nature. Accordingly, there has been insufficient time for interested parties to comment and for us to analyze the comments fully. We will consider Dubai Wire's comments in the context of the final determination.

B. Price Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the normal value to EPs or constructed export prices (CEPs) of individual transactions for comparable merchandise if the Department explains why differences in the patterns of EPs and CEPs cannot be taken into account using the average-to-average methodology. As described above, we have preliminarily determined that, with respect to sales by Dubai Wire and Precision Fasteners applicable to certain customers, regions, and time periods, there was a pattern of prices that differ significantly. We find, however, that these differences can be taken into account using the average-to-average methodology because the average-to-average methodology does not mask differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. *See* Section 777A(d)(1) of the Act. Therefore, for the preliminary determination, we find that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is not meaningful relative to the size of the resulting margin. *See* SAA, H.R. Doc. 103–316, vol. 1 (1994), at 843. Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all U.S. sales. See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 24885, 24888 (May 6, 2010) and *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value,* 75 FR 16431 (April 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

Date of Sale

The regulation at 19 CFR 351.401(i) states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany,* 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

Record evidence indicates that for certain sales made by Dubai Wire, shipment date preceded the invoice date. Therefore, for such sales we used the shipment date as the date of sale in accordance with our practice.

Fair Value Comparisons

To determine whether sales of nails to the United States by Dubai Wire and Precision Fasteners were made at LTFV during the POI, we calculated EPs and normal values, as described in the ''U.S.

[2] *See Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 55183 (October 27, 2009) (test unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value,* 75 FR 14569 (March 26, 2010)) (Bags).

[3] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying Issues and Decision Memorandum at Comment 4. *See* also Targeted-Dumping Memos for more detail.

Price'' and ''Normal Value'' sections of this notice. As described in the ''Allegation of Targeted Dumping'' section, above, we made the comparisons of average EPs to normal value, based on constructed value, for all of Dubai Wire's and Precision Fasteners' reported sales and provided offsets for any non-dumped comparisons.

Product Comparisons

We have relied on 10 criteria for matching U.S. sales of subject merchandise to normal value: nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, and heat treatment.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for Dubai Wire's and Precision Fasteners' U.S. sales where the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation. We calculated EP based on the packed ''Free-on-Board,'' Cost and Freight,'' or ''Delivered, Duty Paid,'' price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. See company-specific analysis memorandum, dated concurrently with this notice.

Normal Value

A. Comparison-Market Viability

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price. Section 773(a)(1)(C) of the Act contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating normal value, we compared each respondent's volume of home-market and third-country sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. For both Dubai Wire and Precision Fasteners, aggregate volumes of sales of foreign like product in the home market or in the third-country markets were not greater than five percent of each company's sales of subject merchandise to the United States. Therefore, neither company's sales in the home market or in the third-country markets are viable as a comparison market. Consequently, we based normal value on constructed value for both companies.

B. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value because neither company had a viable comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative (G&A) expenses, interest expenses, U.S. packing expenses, and profit in the calculation of constructed value. We relied on respondents' submitted materials and fabrication costs, G&A, interest expenses, and U.S. packing costs, except where noted below. Based on our examination of record evidence, Dubai Wire and Precision Fasteners did not appear to experience significant changes in the cost of manufacturing during the period of investigation. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

For Dubai Wire, we reallocated fixed overhead to products by calculating a new fixed overhead ratio and multiplying this ratio by the reported direct labor and variable overhead of each product. We calculated G&A expenses for Dubai Wire on an unconsolidated basis. We analyzed the interest expense for loans between Dubai Wire and its affiliate under the ''transactions disregarded rule'' of section 773(f)(2) of the Act, and determined that the loans were not at arm's length rates. As a result, we included an imputed interest expense amount associated with the non-arm's length affiliated party loans.

For Precision Fasteners, we reallocated the reported direct material costs to products by weight-averaging the reported direct material by steel type and surface finish to alleviate the issue of cost differences unrelated to differences in physical characteristics. We reallocated fixed overhead to products using the ratio of fixed overhead costs to the reported direct labor and variable overhead costs. For additional details on these adjustments, see memorandum to Neal Halper from James Balog (Precision Fasteners) or Gary Urso (Dubai Wire), entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination'' dated concurrently with this notice (Preliminary Determination Cost Calculation Memos).

Because Dubai Wire and Precision Fasteners did not have a viable comparison market, we did not determine selling expenses and profit under section 773(e)(2)(A) of the Act, instead relying on 773(e)(2)(B) of the Act. The statute does not establish a hierarchy for selecting among the alternative methodologies provided in section 773(e)(2)(B) of the Act. *See* SAA at 840. Section 773(e)(2)(B)(iii) of the Act specifies that profit and selling expenses may be calculated based on any other reasonable method as long as the result is not greater than the amount realized by exporters or producers ''in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise'' (*i.e.,* the profit cap).

For both Dubai Wire and Precision Fasteners, we used the profit rate derived from the publicly available financial statements for the fiscal year most contemporaneous with the POI for a company in the United Arab Emirates, Arab Heavy Industries. See Exhibit 14 of April 11, 2011, supplement to the petition. This company produces products in the same general category of merchandise as nails. Further, because this source of information did not provide enough detail to calculate selling expenses for Dubai Wire and Precision Fasteners, we used the companies' respective company-wide selling-expense rates. See company-specific analysis memorandum. We find that, absent alternatives, this approach satisfies sufficiently the criteria of section 773(e) because the selling expenses were derived for subject merchandise as well as for products in the same general category as subject merchandise.

In the instant case, the profit cap cannot be calculated using the available data because we do not have sales in the same general category that would result in a profit cap that is reflective of sales in the foreign country. Specifically, it is not clear whether the Arab Heavy Industries financial statement includes only sales in the foreign country. Therefore, because there is no other information available on the record, as facts available, we are applying option (iii) of section 773(e)(2)(B) of the Act, without quantifying a profit cap.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance-of-sale differences. We calculated constructed value without regard to level of trade with respect to EP sales because neither company had a viable comparison market.

Currency Conversion

It is our normal practice to make currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination for Dubai Wire and Precision Fasteners.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct CBP to suspend liquidation of all entries of nails from the UAE that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated below, as follows: (1) The rates for Dubai Wire, Precision Fasteners, and Tech Fast will be the rates we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 23.48 percent, as discussed in the ''All-Others Rate'' section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

Manufacturer/Exporter	Weighted-average margin (percent)
Dubai Wire FZE	27.73
Precision Fasteners LLC	19.23
Tech Fast International Ltd.	61.54

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. Dubai Wire and Precision Fasteners are the only respondents in this investigation for which we calculated a company-specific rate that is not zero or *de minimis* or determined entirely under Section 776 of the Act. Therefore, because there are only two relevant weighted-average dumping margins for this preliminary determination and because using a weighted-average risks disclosure of business proprietary information of Dubai Wire and Precision Fasteners, the ''all-others'' rate is a simple-average of these two values, which is 23.48 percent. *See Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value,* 75 FR 60723, 60724 (October 1, 2010).

Disclosure

We will disclose the calculations performed in our preliminary determination to interested parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of nails from the UAE are materially injuring, or threatening material injury to, the U.S. industry (see section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed below, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. *See* 19 CFR 351.309(c)(2). Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party. *See* also 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for filing a rebuttal brief. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). 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. *See* 19 CFR 351.310(d).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 4, 2011, Dubai Wire and Precision Fasteners requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, these companies requested that the Department extend the application

of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month to a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this investigation are the following products:

• non-collated (*i.e.,* hand-drive or bulk), two-piece steel nails having plastic or steel washers (''caps'') already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive;

• non-collated (*i.e.,* hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive, and whose packaging and packaging marking are clearly and prominently labeled ''Roofing″ or ''Roof″ nails;

• wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive, and whose packaging and packaging marking are clearly and prominently labeled ''Roofing″ or ''Roof'' nails;

• non-collated (*i.e.,* hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive, and whose packaging and packaging marking are clearly and prominently labeled ''Roofing'' or ''Roof'' nails;

• corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;

• thumb tacks, which are currently classified under HTSUS 7317.00.10.00;

• fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;

• certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and

• fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

Scope of the Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this investigation are the following products:

• Non-collated (*i.e.,* hand-drive or bulk), two-piece steel nails having plastic or steel washers (''caps'') already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500'' to 8'', inclusive; an actual shank diameter of 0.1015'' to 0.166'', inclusive; and an actual washer or cap diameter of 0.900'' to 1.10'', inclusive;

• Non-collated (*i.e.,* hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500'' to 4'', inclusive; an actual shank diameter of 0.1015'' to 0.166'', inclusive; and an actual head diameter of 0.3375'' to 0.500'', inclusive;

• Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500'' to 1.75'', inclusive; an actual shank diameter of 0.116'' to 0.166'', inclusive; and an actual head diameter of 0.3375'' to 0.500'', inclusive;

• Non-collated (*i.e.,* hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75'' to 3'', inclusive; an actual shank diameter of 0.131'' to 0.152'', inclusive; and an actual head diameter of 0.450'' to 0.813'', inclusive;

• Corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;

• Thumb tacks, which are currently classified under HTSUS 7317.00.10.00;

• Fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;

• Certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are Collated with adhesive or polyester film tape backed with a heat seal adhesive; and

• fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2011–28542 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags From Thailand: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen, 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) 482–3683.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2011, the Department of Commerce (the Department) published Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review, 76 FR 59999 (September 28, 2011) (Final Results), in the **Federal Register**.

We received a timely allegation of a ministerial error pursuant to 19 CFR 351.224(c) from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corp., the petitioners, alleging that we calculated a constructed value (CV) profit ratio using a denominator that includes direct and indirect selling expenses, but in the margin program we determined CV profit by applying this ratio to Landblue (Thailand) Co., Ltd.'s (Landblue) cost of production exclusive of direct selling expenses.[1] This incongruity was unintentional and results in the understatement of CV profit. Although the Department agreed with the petitioners that the alleged error is a ministerial error, the Department was unable to issue a determination correcting this error before parties challenged the Final Results at the Court of International Trade (CIT). On October 25, 2011, the CIT granted the Department leave to amend the Final Results and correct the ministerial error. Therefore, in accordance with 19 CFR 351.224(e), we are hereby amending the Final Results with respect to Landblue to correct the ministerial error in our calculation of Landblue's weighted-average margin, and with respect to the respondents not selected for individual examination in so far as the change in Landblue's weighted-average margin affects their margins.[2] For details, see the respective memoranda from Bryan Hansen to the File entitled ''Polyethylene Retail Carrier Bags from Thailand—Landblue (Thailand) Co., Ltd., Amended Final Results Analysis Memorandum'' and ''Polyethylene Retail Carrier Bags from Thailand—Amended Final Results Margin Calculation for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

Amended Final Results of the Review

As a result of our correction of the ministerial error, we determine that the following percentage weighted-average dumping margins exist for polyethylene retail carrier bags from Thailand for the period August 1, 2009, through July 31, 2010:

Producer/Exporter	Percent margin
First Pack Co. Ltd.	28.74
K International Packaging Co., Ltd.	28.74
Landblue (Thailand) Co., Ltd.	25.73
Praise Home Industry, Co. Ltd.	28.74
Siam Flexible Industries Co., Ltd.	28.74
Thai Jirun Co., Ltd. 28.74.	

Assessment Rates

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated importer/customer-specific duty-assessment amounts with respect to sales by Landblue by dividing the total dumping margins (calculated as the difference between normal value and the export price) for each importer or customer by the total number of kilograms Landblue sold to that importer or customer. We will direct CBP to assess the resulting per-kilogram dollar amount against each kilogram of merchandise on each of that importer's or customer's entries during the period of 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 Landblue for which Landblue did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of merchandise produced by Landblue at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination and which did not submit statements of no shipments, we will instruct CBP to apply the rates listed above to all entries of subject merchandise produced and/or exported by such firms.

The Department intends to issue instructions to CBP 15 days after the publication of these amended final results of review.

[1] Because Landblue did not have home-market and third-country sales during the period of review, we used the 2010 financial statements of a third company not under review, Thantawan Public Industry Company, to calculate CV profit and CV selling expenses for Landblue.

[2] For the Final Results, we calculated the margins for respondents not selected for individual examination by using the public, weighted-average margin calculated using the ranged sales values of the selected respondents, Landblue and Thai Plastic Bags Industries Co., Ltd.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of these amended final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication consistent with section 751(a)(1) of the Tariff Act of 1930, as amended (Act): (1) The cash-deposit rates for the companies subject to the review will be the rates shown above; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous 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 period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will be 4.69 percent, the all-others rate from the amended final determination of the LTFV investigation revised as a result of the Section 129 determination published on August 12, 2010. See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand, 75 FR 48940 (August 12, 2010).

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification Requirements

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: October 26, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28428 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Final Results of the 2010 Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 10, 2011, the Department of Commerce (''Department'') published its *Preliminary Results* for the January 1, 2010, through December 31, 2010, new shipper review of wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC'').[1] Although invited to do so, interested parties did not comment on our *Preliminary Results.* Therefore, the *Preliminary Results* are hereby adopted as the final results.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor or Jeffrey Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; *telephone:* (202) 482–0989 and (202) 482–2769, respectively.

Background

On August 10, 2011, the Department published its *Preliminary Results* of the review of the antidumping order on WBF from the PRC for Dongguan Yujia Furniture Co., Ltd. (''Yujia'') covering the period January 1, 2010, through December 31, 2010. No parties commented on the *Preliminary Results.*

Scope of the Order

The product covered by the order is WBF. WBF is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[2] highboys,[3] lowboys,[4] chests of drawers,[5] chests,[6] door chests,[7] chiffoniers,[8] hutches,[9] and armoires; [10]

[1] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 76 FR 49443 (August 10, 2011) (''*Preliminary Results*'').

[2] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[3] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[4] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[5] A chest of drawers is typically a case containing drawers for storing clothing.

[6] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[7] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[8] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[9] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[10] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

(6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate; [11] (9) jewelry armories; [12] (10) cheval mirrors; [13] (11) certain metal parts; [14] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds [15] and (14) toy boxes.[16]

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the U.S. Harmonized Tariff Schedule (''HTSUS'') as ''wooden * * * beds'' and under subheading 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as ''parts of wood.'' Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, or 9403.20.0018. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' The order covers all WBF meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

Because no parties commented on the *Preliminary Results,* we have adopted the *Preliminary Results* as the final results, including the margin determined therein.[17]

Final Results of Review

We find that the following weighted-average dumping margin exists for Yujia for the period January 1, 2010, through December 31, 2010:

Exporter-Producer	Weighted-average margin (percent)
Dongguan Yujia Furniture Co., Ltd., Exporter/Producer	0.00

[11] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[12] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[13] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[14] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

[15] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People 's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[16] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (''ASTM'') standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[17] *See* 76 FR 49443.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. We calculated importer- (or customer-) specific *ad valorem* rates for Yujia by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the period of review, pursuant to 19 CFR 351.212(b)(1).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for shipments of subject merchandise from Yujia 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 subject merchandise exported and produced by Yujia is zero; therefore no cash deposit will be required for entries of subject merchandise exported and produced by Yujia ; (2) for subject merchandise exported by Yujia but not produced by Yujia the cash deposit rate will continue to be the PRC-wide rate of 216.01 percent; (3) for subject merchandise produced by Yujia but not exported by Yujia the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice of the final results of this new shipper review is issued and published in accordance with sections 751(a)(2)(B), 751(a)(2)(C), and 777(i) of the Act and 19 CFR 351.214(h) and 19 CFR 351.221(b)(5).

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28560 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–924]

Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (''PET film'') from the People's Republic of China (''PRC''). The period of review (''POR'') is November 1, 2009, through October 31, 2010.

We have preliminarily determined that sales have been made below normal value (''NV'') by certain companies subject to this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on 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. Parties who submit comments are requested to submit with each argument a summary of the argument. 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:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Jonathan Hill, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3936 and (202) 482–3518 respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2008, the Department published in the **Federal Register** an antidumping duty order on PET film from the PRC.[1] On November 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PET film from the PRC for the period November 1, 2009, through October 31, 2010.[2] On November 29, 2010, the Department received timely requests in accordance with 19 CFR 351.213(b)(2) for an administrative review from Fuwei Films (Shandong) Co., Ltd. (''Fuwei Films''), Shaoxing Xiangyu Green Packing Co., Ltd. (''Green Packing''), and Tianjin Wanhua Co., Ltd. (''Wanhua''). On November 30, 2010, the Department also received a timely request from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, ''Petitioners''), in accordance with 19 CFR 351.213(b)(1), for an administrative review of the antidumping duty order on PET film from the PRC for six companies: Fuwei Films, Green Packing, Wanhua, Sichuan Dongfang Insulating Material Co., Ltd. (''Dongfang''), Shanghai Xishu Electric Material Co., Ltd. (''Xishu''), and Shanghai Uchem Co., Ltd. (''Uchem''). On December 28, 2010, the Department

[1] *See Notice of Antidumping Duty Orders: Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008) (''Orders'').

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010).

published a notice of initiation of an antidumping duty administrative review on PET film from the PRC, in which it initiated a review of Fuwei Films, Green Packing, Wanhua, Dongfang, Xishu, and Uchem.[3]

On December 30, 2010, the Department placed on the record CBP import data for the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3920.62.0090. On January 20, 2011, the Department exercised its authority to limit the number of respondents selected for individual examination pursuant to section 777A(c)(2)(B) of the Act.[4] The Department selected the two largest exporters by volume as our mandatory respondents for this review, Dongfang and Wanhua.[5]

On January 20, 2011, the Department issued the antidumping questionnaire to Dongfang and Wanhua. On February 28, 2011, the Department received separate rate certifications from Fuwei Films, Green Packing, and Wanhua.[6] Between March 3, 2011 and June 20, 2011, Dongfang and Wanhua responded to the Department's questionnaire and supplemental questionnaires. In addition, during March 2011, the Department received voluntary questionnaire responses from Fuwei Films and Green Packing. Between March and July 2011 Petitioners provided comments on the mandatory respondents' questionnaire responses.

In response to the Department's April 8, 2011, letter providing parties with an opportunity to submit comments regarding surrogate country and surrogate value (''SV'') selection,[7] Petitioners, the mandatory respondents, and the separate rate applicants filed surrogate country and SV comments on April 22, 2011 and May 6, 2011, respectively.[8] Petitioners, the mandatory respondents, and the separate rate applicants filed rebuttal surrogate country comments on April 29, 2011.

On July 18, 2011, the Department extended the time period for completion of the preliminary results of this review by 60 days until October 3, 2011.[9] On October 3, 2011, the Department extended the time period for completion of the preliminary results of this review by a further 30 days until October 31, 2011.[10]

Period of Review

The POR is November 1, 2009 through October 31, 2010.

Scope of Order

The products covered by the order are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the HTSUS. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Verification

Pursuant to Section 782(i) of the Act and 19 CFR 351.307(b)(iv), between July 27, 2011 and August 4, 2011, the Department conducted verification of Dongfang's and Wanhua's U.S. sales and factors of production (''FOP'') submissions.[11]

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (''NME'') country in all past antidumping duty investigations and administrative reviews and continues to do so in this case.[12] The Department has previously examined the PRC's market-economy status and determined that NME status should continue for the PRC.[13] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[14] No interested party to this proceeding has contested such treatment. Accordingly, we calculated NV using a FOP methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information from a surrogate market-economy country or countries considered to be appropriate by the Department.[15] When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[16] Further, the Department normally values all FOPs in a single surrogate country.[17] The sources of SVs are discussed under the ''Normal Value'' section below and in the Surrogate Value Memorandum, which is on file in the Central Records Unit, Room 7046 of the main Department building.[18]

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 81565 (December 28, 2010) (''Initiation Notice'').

[4] *See* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, AD/CVD Operations, Office 4, ''Respondent Selection in the Second Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China,'' dated January 20, 2011 (''Respondent Selection Memo'').

[5] Dongfang and Wanhua are collectively referred to as the ''mandatory respondents.''

[6] Fuwei Film and Green Packing are collectively referred to as ''separate rate applicants.''

[7] *See* Letter from Robert Bolling, Program Manager, Office 4, to All Interested Parties, ''Antidumping Duty Administrative Review of PET film from the People's Republic of China (PRC),'' dated April 8, 2011.

[8] Bemis Company Inc., an industrial consumer of the subject merchandise, also submitted SV comments.

[9] *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 42113 (July 18, 2011).

[10] *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 61085 (October 3, 2011).

[11] *See* Memorandum from Thomas Martin, Jonathan Hill and Whitney Rolig to the File, ''Verification of the Sales and Factors Response of Sichuan Dongfang Insulating Material Co., Ltd., in the Second Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China,'' dated September 12, 2011 (''Dongfang Report''); *see also* Memorandum from Thomas Martin, Jonathan Hill and Whitney Rolig to the File, ''Verification of the Sales and Factors Response of Tianjin Wanhua Co., Ltd. in the Antidumping Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China,'' dated September 12, 2011 (''Wanhua Report'').

[12] *See* section 771(18)(C) of the Act; *see, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 9753 (February 22, 2011)

[13] *See* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, The People's Republic of China (PRC) Status as a Non-Market Economy (NME), dated May 15, 2006. This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf.*

[14] *See* section 771(18)(C)(i) of the Act.

[15] *See* section 773(c)(1) of the Act.

[16] *See* section 773(c)(4) of the Act.

[17] *See* 19 CFR 351.408(c)(2).

[18] *See* Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, ''Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Surrogate Value

Continued

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that India, Indonesia, Peru, the Philippines, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.[19] On April 22, 2011, Petitioners proposed selecting Thailand as the surrogate country because: (1) The PRC and Thailand share comparable levels of economic development, as evidenced by the fact that Thailand's per capita gross national income is the closest to the PRC among the countries included in the Policy Memorandum listing potential surrogate countries; and (2) Thailand is a significant producer of merchandise identical to subject merchandise, PET film.[20] On April 29, 2011, the mandatory respondents filed rebuttal comments arguing that the Department should select India as the surrogate country.[21]

The Department finds that both Thailand and India are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise.[22] Thus, the Department bases its selection of a surrogate country on the availability of contemporaneous Indian and Thai data for valuing FOP.

With respect to data considerations, in selecting a surrogate country, Policy Bulletin 04.1 describes the Department's practice. Specifically, ''* * * if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country.'' [23] Currently, the record contains SV information, including possible surrogate financial statements, from Thailand and India. The record of this proceeding contains one Thailand company financial statement submitted by Petitioners, that of Polyplex Public Company Ltd. (''Polyplex (Thailand)''). However, the Department has determined that the financial statement of Polyplex (Thailand) does not permit the Department to calculate accurate surrogate financial ratios, as it does not contain information upon which to apply a reasonable methodology to apportion raw material expenses and consumable expenses to calculate the surrogate overhead ratio.[24] Further, the Department finds that treating the entire sum as raw materials (*i.e.,* placing the entire sum in the denominator of the overhead ratio) would be highly distortive to the overhead ratio.[25] Therefore, based on record evidence, the Department has preliminarily determined to select India as the surrogate country on the basis that: (1) It is at a comparable level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOP.[26] Accordingly, we have calculated NV using Indian prices, when available and appropriate, to value the FOPs of the mandatory respondents.[27] In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly-available information to value FOP until 20 days after the date of publication of the preliminary results.[28]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.[29] It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test set out in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers''*), as 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 (May 2, 1994) (''*Silicon Carbide''*). However, if the Department determines that a company is wholly foreign-owned or located in a market economy (''ME''), then a separate rate analysis is not necessary to determine whether it is independent from government control.[30] Fuwei Films is wholly foreign-owned.[31] Therefore, for the purposes of these preliminary results, the Department finds that it is not necessary to perform a separate-rate analysis with respect to Fuwei Films.

Dongfang, Green Packing, and Wanhua reported that they are either wholly Chinese-owned companies, or joint ventures between Chinese and foreign companies.[32] Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be

Memorandum,'' dated October 27, 2011 (''Surrogate Value Memorandum'').

[19] *See* Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, Office 4, ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China'' (April 7, 2011) (''Policy Memorandum'').

[20] *See* Letter from Petitioners to Secretary of Commerce, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China; Choice of Surrogate Country,'' (April 22, 2011).

[21] *See* Letter from Respondents to Secretary of Commerce, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China; A–570–924; Rebuttal to the Petitioners' Comments on Surrogate Country Selection'' (April 29, 2011).

[22] *See* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Jonathan Hill, International Trade Compliance Analyst, ''Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Selection of a Surrogate Country,'' dated October 27, 2011 (''Surrogate Country Memo'') at 7–8.

[23] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004) (''Policy Bulletin 04.1'') available at *http://ia.ita.doc.gov.*

[24] *See* Surrogate Country Memo at 9–11.

[25] *See* Surrogate Country Memo at 10.

[26] *See* Surrogate Country Memo at 8–11.

[27] *See* Surrogate Value Memorandum at 2.

[28] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[29] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at *http://ia.ita.doc.gov/policy/bull05-1.pdf.*

[30] *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

[31] *See* Fuwei Film's February 28, 2011 Separate Rate Certification response at page 2.

[32] *See* Dongfang's March 8, 2011 response to Section A of the Department's Antidumping Duty questionnaire at question 2(a)(i); *see also* Wanhua's March 8, 2011 response to Section A of the Department's Antidumping Duty questionnaire at question 2(a)(i); *see also* Green Packing's February 28, 2011 Separate Rate Certification at page 2.

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.[33]

The evidence provided by Dongfang, Green Packing, and Wanhua supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with its business and export licenses, (2) applicable legislative enactments decentralizing control of companies, and (3) formal measures by the government decentralizing control of companies.[34]

2. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency, (2) whether the respondent has authority to negotiate and sign contracts and other agreements, (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[35] 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.

The evidence provided by Dongfang, Green Packing, and Wanhua supports a preliminary finding of *de facto* absence of government control based on the following: (1) The absence of evidence that the export prices are set by or are subject to the approval of a government agency, (2) the respondents have authority to negotiate and sign contracts and other agreements, (3) the respondents have autonomy from the government in making decisions regarding the selection of management, and (4) the respondents retain the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[36]

Calculation of Separate Rate

The statute and our regulations do not address directly how we should establish a rate to apply to imports from companies which we did not select for individual examination in accordance with section 777A(c)(2) of the Act in an administrative review. Generally, we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, as guidance when we establish the rate for respondents not examined individually in an administrative review.[37] Section 735(c)(5)(A) of the Act provides that ''the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, * * *''

Because using the weighted-average margin based on the calculated net U.S. sales quantities for Wanhua and Dongfang would allow these two respondents to deduce each other's business-proprietary information and thus cause an unwarranted release of such information, we cannot assign to the separate rate companies the weighted-average margin based on the calculated net U.S. sales values from these two respondents.

For these preliminary results, we determine that using the ranged total sales quantities reported by Wanhua and Dongfang from the public versions of their submissions, is more appropriate than applying a simple average.[38] These publicly available figures provide the basis on which we can calculate a margin which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of Wanhua and Dongfang. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.

Because the calculated net U.S. sales values for Wanhua and Dongfang are business-proprietary figures, we find that 46.66 percent, which we calculated using the publicly available figures of U.S. sales quantities for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated U.S. sales quantities of Wanhua and Dongfang.[39]

The PRC-Wide Entity

In addition to the separate-rate applications discussed above, there are two companies, Xishu and Uchem, for which we initiated a review in this proceeding and which did not previously have a separate rate. In accordance with the Department's established NME methodology, a party's separate rate status must be established in each segment of the proceeding in which the party is involved.[40] Because these companies did not file a Separate Rate Application to demonstrate eligibility for a separate rate in this administrative review, or certify that they had no shipments,[41] we preliminarily determine that these companies are part of the PRC-wide entity.

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' (''FA'') if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

[33] *See Sparklers,* 56 FR at 20589.

[34] *See* Dongfang's March 8, 2011 Section A Questionnaire response at question 2(d) through 2(f); *see also* Green Packing's March 12, 2011, Separate Rate Certification response at questions 10 through 14; *see also* Wanhua's March 8, 2011 Section A Questionnaire response at question 2(d) through 2(f).

[35] *See Silicon Carbide,* 59 FR at 22587; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[36] *See* Dongfang's March 8, 2011, Section A Questionnaire response at questions 2(a)(iii)–(v); 2(b)–(c); 2(g)–(q); *see also* Green Packing's February 28, 2011 Separate Rate Certification response at questions 15 through 20; *see also* Wanhua's March 8, 2011, Section A Questionnaire response at questions 2(a)(iii)–(v); 2(b)–(c); 2(g)–(q).

[37] *See Notice of Final Results and Partial Rescission Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from the People's Republic of China,* 75 FR 49460 (August 13, 2010); *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review,* 75 FR 6352 (February 9, 2010), and the accompanying I&D Memo at Comment 2.

[38] *See* Wanhua Supplemental Section A questionnaire response (Public Version) dated April 11, 2011, at Exhibit SA–1; *see also* Dongfang Section A questionnaire response (Public Version) dated March 8, 2011, at Exhibit A–1.

[39] *See* ''Memorandum to the File from Jonathan Hill, International Trade Compliance Analyst, Office 4 Re: Calculation of Separate Rate,'' dated concurrently with this notice.

[40] *See Sigma Corp.* v. *United States,* 117 F.3d 1401, 1405–06 (Fed. Cir. 1997) (affirming the Department's presumption of State control over exporters in non-market economy cases).

[41] *See Initiation Notice,* 75 FR at 81566.

Wanhua

In its June 13, 2011, supplemental Section D questionnaire, the Department requested that Wanhua disclose its methodology for reporting its FOPs on a product and product thickness specific basis (*i.e.,* control number (''CONNUM'') specific or product name (''PRODCODU'') specific).[42] On June 27, 2011, Wanhua stated that it ''calculated its per unit figure of FOPs by the consumption allocation, based on the actual consumption of FOPs, actual production quantity and technical requirements of each product with specific thickness.''[43] During verification, Wanhua provided the Department with a worksheet with specific information regarding its methodology for the purpose of demonstrating how it had calculated the direct material FOP consumption rates reported in its FOP database; however, Wanhua was not able to reproduce the exact direct material consumption rates as reported in its FOP database. Thus, pursuant to section 776(a)(2)(D) of the Act, Wanhua provided information to the Department that could not be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Based on findings at verification, we are applying partial AFA to Wanhua's direct material consumption rates because the Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record. Specifically, the Department could not verify the exact PET chip consumption rate specific to each CONNUM that Wanhua reported.[44] At verification, Wanhua attempted to substantiate its reported direct material FOP allocations for each product produced during the POR using PET chip proportions (*i.e.,* the percentage of the finished PET film), which were machine settings that the company adjusted yearly based upon its production experience.[45] Wanhua provided a worksheet intended to represent its methodology for deriving material input calculations as reported in its questionannire response. However, using this worksheet, we were unable to substantiate Wanhua's reported figures because the figures in the worksheet resulted in calculated consumption rates that were discrepant with those in its questionnaire responses. The Department had previously requested Wanhua to fully disclose its methodology in its June 27, 2011, supplemental questionnaire response. However, Wanhua only stated in its response to the Department that the methodology involved the ''technical requirements of each product with specific thickness,'' which it chose not to disclose. By failing to disclose the PET chip proportions required to perform this methodology in its June 27, 2011, supplemental questionnaire response, Wanhua deprived both the Department, and itself, of the opportunity to correct and support the results of the methodology at verification. Consequently, in accordance with section 776(b) of the Act, we find that an adverse inference is warranted because Wanhua did not act to the best of its ability to provide the Department with verifiable data within its exclusive control. Therefore, for the preliminary results, pursuant to section 776(a)(2)(D) of the Act, the Department calculated consumption rates for bright chip, additive chip, and reclaimed chip by using the highest consumption rate in Wanhua's FOP data set submitted on June 27, 2011 ''Revised FOP Computer Data Base—WANFOP003'' for each of the three material inputs. For further details regarding the Department's methodology, *see* Wanhua Analysis Memorandum.[46]

Fair Value Comparisons

To determine whether sales of PET film to the United States by the mandatory respondents were made at NV, we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we have used EP for the U.S. sales of the mandatory respondents because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise warranted.

We have based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we have made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic inland insurance, domestic brokerage and handling, international freight, and marine insurance. Dongfang and Wanhua did not report or claim any other adjustments to EP.[47]

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available 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. This methodology ensures that the Department's calculations are as accurate as possible.[48]

[42] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Wanhua, ''Third Section D Supplemental Questionnaire'' (June 13, 2011) at 1.

[43] *See* Wanhua's supplemental Section D response dated June 27, 2011, at 2.

[44] *See* Wanhua's March 28, 2011, response at Exhibit D–7.

[45] *See* Wanhua Report at 13.

[46] *See* Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, ''Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Analysis Memorandum for Tianjin Wanhua Co., Ltd.'' (October 27, 2011) (''Wanhua Analysis Memorandum'').

[47] *See* Wanhua Analysis Memorandum. *See also* Memorandum to the File ''Analysis Memorandum for the Preliminary Results of the Second Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Sichuan Dongfang Insulating Material Co., Ltd. (''Dongfang'')'' (''Dongfang Analysis Memorandum''), dated October 27, 2011.

[48] *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

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in ME currency, the Department may value the factor using the actual price paid for the input.[49] Wanhua reported raw material purchases sourced from ME suppliers and paid for in a ME currency during the POR.[50] In accordance with our practice outlined in Antidumping Methodologies: Market Economy Inputs,[51] when at least 33 percent of an input is sourced from ME suppliers and purchased in a ME currency, the Department will use actual ME purchase prices to value these inputs.[52] Therefore, the Department has valued certain inputs using the ME purchase prices reported by Wanhua, where appropriate. Dongfang reported that it did not purchase inputs from ME suppliers for the production of the subject merchandise.[53]

Section 773(c) of the Act provides that the Department will value the FOP 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 the FOP, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are: (1) At a comparable level of economic development, and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act. As stated above, the Department has preliminarily determined to select India as the surrogate country.

We calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The 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 the mandatory respondents for materials, energy, labor, by-products, and packing.

Wanhua stated that it generated two by-products during the production process: reclaimed PET chip that cannot be used for manufacturing PET film, and PET film scrap.[54] Dongfang stated that it generated one by-product during the production process, reclaimed PET chip, that cannot be used for manufacturing PET film.[55] Both companies requested by-product offsets to NV for these by-products and provided record evidence establishing that these by-products generated during the course of production have commercial value.[56] The Department examined and confirmed the companies' by-product offsets at verification.[57] Therefore, for these preliminary results, we have granted both mandatory respondents a by-product offset to NV.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by the mandatory respondents for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Indian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value the mandatory respondents' reported FOPs may be found in the Surrogate Value Memorandum.

The Department calculated SVs for the majority of reported FOPs purchased from NME sources using the contemporaneous, weighted-average unit import value derived from the *Monthly Statistics of the Foreign Trade of India,* as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the Global Trade Atlas (''GTA''), available at *http://www.gtis.com/wta.htm* (''GTA Indian Import Statistics'').[58] GTA Indian Import Statistics were reported in India Rupees and are contemporaneous with the POR. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[59]

In those instances where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOPs, the Department adjusted the publicly available SVs using the Indian Wholesale Price Index, as published in the *International Financial Statistics* of the International Monetary Fund.[60]

Furthermore, with regard to Indian import-based SVs, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[61] We are

(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).

[49] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc.* v. *United States*, 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[50] *See* Wanhua's March 28, 2011 section D response at Exhibit D–4.

[51] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–19 (October 19, 2006) (''Antidumping Methodologies: Market Economy Inputs'').

[52] For a detailed description of all actual values used for market-economy inputs, *see* Wanhua Analysis Memorandum.

[53] *See* Dongfang's March 28, 2011 section D response at 8.

[54] *See* Wanhua's March 28, 2011 section D response at Exhibits D–11 and D–15.

[55] *See* Dongfang's March 28, 2011 section D response at Exhibits D–10 and D–13.

[56] *See* Wanhua's March 28, 2011 section D response at Exhibit D–12 through D–14; *see also* Dongfang's March 28, 2011 section D response at Exhibits D–11 and D–12.

[57] *See* Dongfang Report at 16. *See* Wahua Report at 19.

[58] *See* Surrogate Value Memorandum.

[59] *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).

[60] *See* Surrogate Value Memorandum.

[61] *See* Final Results Of Redetermination Pursuant To Court Remand, dated February 25, 2010, *Jinan Yipin Corp., Ltd.* v. *United States,* 637 F. Supp. 2d 1183 (CIT 2009). *See also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the*

Continued

also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.[62] Rather, this legislative history states that the Department should base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Indian import-based SVs.

The Department used GTA Indian Import Statistics to calculate SVs for raw materials (*i.e.,* PET chips), packing materials (*i.e.,* pallets, lateral board, PE foam, paper pipe, stretch film, packing tape, plastic caps, plastic bags, top board, and metal clips), and by-products (*i.e.,* reclaimed PET chips that cannot be used for manufacturing PET film, and PET film scrap).

Previously, 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. However, on May 14, 2010, the 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 (Feb. 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'').

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies.* To value the respondent's labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC-Revision 3–D (''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 11 of the ISIC-Revision 3–D standard, in accordance with Section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is Rs.45.70. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memorandum.

We valued electricity using the Schedule of Electricity Tariffs, as published by the Maharashtra Energy Regulatory Commission, in its publication dated June 2009.[63] These electricity rates represent actual publicly-available information on tax-exclusive electricity rates. The Department used the rates for low tension industrial electricity supply for a load between 20 and 100 kilowatts. We did not inflate this value because utility rates represent current rates.

We valued truck freight expenses using an Indian per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm.*[64] The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate since it is contemporaneous with the POR.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank.[65]

We valued marine insurance using a price quote retrieved from RJG Consultants, online at *http://www.rjgconsultants.com/163.html,* an ME provider of marine insurance.[66] We did not inflate this rate since it is contemporaneous with the POR.

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, general, and administrative expenses (''SG&A''), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. As stated above in the *Surrogate Country* section of this notice, in this administrative review, Petitioners submitted to the record the financial statements of Polyplex (Thailand) and Polyplex Corporation Ltd. (''Polyplex (India)'') and Wanhua submitted the financial statement of JBF Industries Limited (''JBF''). As stated above, we have determined not to rely on the financial statement of Polyplex (Thailand), because it does not contain sufficient information for calculating factory overhead. Regarding the contemporaneous 2009–2010 financial statements of Polyplex (India) and JBF, both show evidence of participation in the Duty Entitlement Passbook scheme, which the Department has found by to be a countervailable subsidy. *See Carbazole Violet Pigment 23 From India: Final Results of Countervailing Duty Administrative Review,* 75 FR 33243 (June 11, 2010) and the accompanying Issues and Decision Memorandum at II.A.2. Polyplex (India) is an Indian producer of PET film, while JBF produced PET yarn, which the Department has determined to be comparable to PET film. Since there are currently no other financial statements on the record of this administrative review that the Department can use to calculate the surrogate financial ratios, we have determined that the 2009–2010 financial statement of Polyplex (India) is the best available information for calculating surrogate financial ratios, because it is the only usable financial statement on the record from a producer of merchandise identical to the subject merchandise. *See* section 773(c)(1) of the Act (''* * * the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country * * *''). Therefore, based on the above data considerations, we consider India to have the most

Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006); and *China Nat'l Mach. Import & Export Corp.* v. *United States,* 293 F. Supp. 2d 1334 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).

[62] *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) at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

[63] *See* Surrogate Value Memorandum at 4.

[64] *See id.* at 9.

[65] *See id.* at 8.

[66] *See id.* at 8.

appropriate surrogate financial ratio data for use in this proceeding.[67]

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* the Surrogate Value Memorandum.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect as certified by the Federal Reserve Bank on the date of the U.S. sale.

Weighted-Average Dumping Margin

The preliminary weighted-average dumping margin is as follows:

PET FILM FROM THE PRC

Exporter	Weighted-average margin (percentage)
Tianjin Wanhua Co., Ltd	46.79
Sichuan Dongfang Insulating Material Co., Ltd	41.82
Fuwei Films (Shandong) Co., Ltd	46.66
Shaoxing Xiangyu Green Packing Co., Ltd	46.66
PRC-wide Entity[68]	76.72

[68] Xishu and Uchem are part of the PRC-wide entity.

Disclosure and Public Comment

The Department intends to 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). Any interested party may request a hearing within 30 days of publication of these preliminary results.[69] If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of review.[70] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.[71] The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in all comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

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 and 19 CFR 351.212(b). For assessment purposes, we calculated importer- or customer-specific assessment rates for merchandise subject to this review. 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 value 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) in accordance with the requirement of 19 CFR 351.106(c)(2), the Department will instruct CBP to assess that importer's or customer's entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. 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 shipments of the subject merchandise from the PRC 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 Wanhua, Dongfang, Fuwei and Green Packing, which have separate rates, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (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 76.72 percent;[72] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections

[67] *See* Surrogate Value Memorandum at 7 and Exhibit 7.

[69] *See* 19 CFR 351.310(c).

[70] *See* 19 CFR 351.309(c); Parties submitting written comments must submit them pursuant to the Department's e-filing regulations. *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.*

[71] *See* 19 CFR 351.309(d).

[72] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55041 (September 24, 2008).

751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28571 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–972]

Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 3, 2011.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that certain stilbenic optical brightening agents (''OBA'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Shawn Higgins or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0679 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, the Department received an antidumping duty petition concerning imports of OBAs from the PRC and Taiwan filed in proper form by the Clariant Corporation (''Petitioner'').[1] On April 4, 2011, and April 5, 2011, the Department issued requests for information and clarification of certain areas of the petition, to which Petitioner timely filed responses on April 7, 2011, and April 8, 2011.[2]

The Department initiated an antidumping duty investigation of OBAs from the PRC on April 20, 2011.[3]

In the *Initiation Notice,* the Department stated that it intended to select PRC respondents based on quantity and value (''Q&V'') questionnaires.[4] On April 21, 2011, the Department requested Q&V information from 30 companies identified in the petition as potential producers and/or exporters of OBAs from the PRC.[5] The Department received timely responses to its Q&V questionnaire from two companies, Zhejiang Hongda Chemicals Co., Ltd. (''Hongda'') and Zhejiang Transfar Whyyon Chemical Co., Ltd. (''Transfar'').[6]

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy (''NME'') investigations. The process requires exporters and producers to submit a separate-rate status application (''SRA'') [7] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. The SRA for this investigation was posted on the Department's Web site, *http://ia.ita.doc.gov/ia-highlights-and-news.html,* on April 21, 2011. The deadline for filing an SRA was June 26, 2011.[8]

On May 18, 2011, the Department issued antidumping questionnaires to Hongda and Transfar. In June and July 2011, Hongda and Transfar submitted timely responses to sections A, C, and D of the Department's antidumping questionnaire.

The Department issued supplemental questionnaires to Hongda and Transfar from June to October 2011. Hongda and Transfar submitted timely responses to the Department's supplemental questionnaires from July to October 2011. From June to September 2011, Petitioner submitted comments to the Department regarding the submissions and/or responses of Hongda and Transfar.

On May 27, 2011, the International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of OBAs from the PRC.[9]

On June 9, 2011, the Department issued a letter to all interested parties inviting comments regarding whether Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 2921.59.4000 and 2921.59.8090 are appropriate for inclusion in the scope of the investigation.[10] Petitioner submitted comments on June 16, 2011.[11] No other party submitted comments. On July 11, 2011, the Department issued a memorandum detailing its decision to continue to include HTSUS subheadings 2921.59.4000 and 2921.59.8090 in the scope of the investigation.[12]

On July 29, 2011, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On August 10, 2011, the Department published a postponement of the preliminary determination on OBAs from the PRC.[13]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise.

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[1] *See* Antidumping Duty Petitions on Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan (March 31, 2011).

[2] *See* Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Amendment to Petitions (April 7, 2011); *see also* Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Amendment to Petitions (April 8, 2011).

[3] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 76 FR 23554 (April 27, 2011) (''*Initiation Notice*'').

[4] *See Initiation Notice,* 76 FR at 23558.

[5] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, ''Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Quantity and Value Questionnaire'' (April 21, 2011).

[6] *See* the Department's memorandum entitled, ''Respondent Selection in the Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China,'' dated May 18, 2011 (''Respondent Selection Memo'').

[7] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (''Policy Bulletin 05.1''), available at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

[8] No party submitted a SRA.

[9] *See Investigation Nos.* 731–TA–1186–1187 (Preliminary), 76 FR 30967 (Int'l Trade Comm'n May 27, 2011).

[10] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, (June 9, 2011).

[11] *See* Petitioner's June 16, 2011, submission.

[12] *See* Memorandum to Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, ''Certain Harmonized Tariff Schedule Numbers in the Scope of Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan'' (July 11, 2011).

[13] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 76 FR 49443 (August 10, 2011).

Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from Transfar on October 19, 2011. Transfar consented to the extension of provisional measures from a four-month period to not longer than six months. Because this preliminary determination is affirmative, and the request for postponement was made by an exporter who accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

Period of Investigation

The period of investigation (''POI'') is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2011.[14]

Scope of the Investigation

The OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4′-bis [1,3,5- triazin-2-yl] [15] amino-2,2′-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The OBAs covered by this investigation include final OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of OBA products.

Excluded from this investigation are all forms of 4,4′-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] [16] amino-2,2′-stilbenedisulfonic acid, $C_{40}H_{40}N_{12}O_8S_2$ (''Fluorescent Brightener 71''). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of OBAs with each other, or of OBAs with additives that are not OBAs), and in any type of packaging.

These OBAs are classifiable under subheading 3204.20.8000 of the HTSUS, but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Non-Market Economy Country

For purposes of the initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.[17] The Department's most recent examination of the PRC's market status determined that NME status should continue for the PRC.[18] In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The Department has not revoked the PRC's status as an NME country, and we have therefore treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production (''FOPs'') valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' section below.

The Department determined that Philippines, Indonesia, Ukraine, Thailand, Colombia, and South Africa are countries comparable to the PRC in terms of economic development.[19] Once the countries that are economically comparable to the PRC have been identified, 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 is both available and reliable.[20] Petitioner and Transfar submitted further comments regarding surrogate country selection on July 20, 2011. On July 27, 2011, Petitioner, Transfar and Hongda submitted rebuttal comments.

We have determined that it is appropriate to use Thailand as a surrogate country pursuant to section 773(c)(4) of the Act because we have found that: (1) It is at a similar level of economic development; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand that we can use to value the FOPs.[21] Thus, we have calculated normal value (''NV'') using Thailand prices when available and appropriate to value the FOPs of the OBA producers under investigation. We have obtained and relied upon contemporaneous publicly available information wherever possible.[22]

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[23]

[14] *See* 19 CFR 351.204(b)(1).

[15] The brackets in this sentence are part of the chemical formula.

[16] *Id.*

[17] *See Initiation Notice,* 76 FR at 23557.

[18] *See* Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China (''China'') China's Status as a Non-Market Economy (''NME'') (August 30, 2006) (memorandum is on file in the CRU on the record of case number A–570–901).

[19] *See* Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, ''Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China'' (June 23, 2011) (''Policy Memorandum''). The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

[20] *See Id.*

[21] *See* Memorandum to Abdelali Elouaradia from Shawn Higgins, ''Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Surrogate Country Memorandum'' (October 27, 2011).

[22] *See* Memorandum to Abdelali Elouaradia through Robert Bolling re: Selection of Surrogate Values at 2, dated May 19, 2011 (''Surrogate Value Memorandum'').

[23] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and*

Continued

Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information were filed on July 27, 2011, by Petitioner and Transfar. Petitioner, Transfar, and Hongda filed rebuttal surrogate value comments on August 10, 2011.[24]

Application of Adverse Facts Available

The PRC-Wide Entity and PRC-Wide Rate

The Department issued its request for Q&V information to 30 potential Chinese exporters of merchandise under consideration, in addition to posting the Q&V questionnaire on the Department's Web site.[25] While information on the record of this investigation indicates that there are numerous producers/exporters of OBAs in the PRC, we received two timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V questionnaire. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under consideration during the POI from the PRC that did not respond to the Department's request for information. We have treated these non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate their eligibility for a separate rate.[26]

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Specifically, certain companies did not respond to our questionnaire requesting Q&V information. Accordingly, we find that the PRC-entity: (i) Withheld information requested by the Department; (ii) failed to provide information in a timely manner and did not indicate that it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form; and (iii) significantly impeded the proceeding by not submitting the requested information. As a result, pursuant to sections 776(a)(2)(A)–(C) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate.[27] Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[28] We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Furthermore, the PRC-wide entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[29] Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[30] The highest margin alleged in the petition is 203.16 percent.[31] This rate is higher than any of the calculated rates assigned to individually examined companies. Thus, as AFA, the Department's practice would be to assign the rate of 203.16 percent to the PRC-wide entity.

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.'' [32] To ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[33]

Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum (''IDM'') at Comment 2.

[24] *See* the ''Factor Valuation'' section below; *see also* Surrogate Value Memorandum.

[25] Petitioner identified 30 companies as potential producers/exporters of OBAs from the PRC. *See* Respondent Selection Memo.

[26] *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 (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).

[27] *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

[28] *See* Statement of Administrative Action, accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, 870 (1994) (''SAA''); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[29] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (''*Nippon Steel*'') (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (i.e., information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'')).

[30] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying IDM, at ''Facts Available.''

[31] *See Initiation Notice,* 76 FR at 23558.

[32] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479, 6481 (February 4, 2008), and accompanying IDM at Comment 2 (quoting SAA at 870).

[33] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we examined information on the record and found that we were unable to corroborate the highest margin in the petition. Therefore, the Department finds that the highest transaction-specific margin of the mandatory respondents is sufficiently adverse to act as the AFA rate. With respect to AFA, for the preliminary determination, we have assigned the PRC-wide entity the rate of 141.08 percent, the highest transaction-specific margin among the mandatory respondents.[34] No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.[35]

Date of Sale

19 CFR 351.401(i) states that, ''in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' In *Allied Tube & Conduit Corp.* v. *United States,* the Court of International Trade (''CIT'') noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' [36] The date of sale is generally the date on which the parties agree upon all material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[37]

For sales by Hongda and Transfar, we used the commercial invoice date as the sale date because record evidence indicates that the terms of sale were not set until the issuance of the commercial invoice.[38]

Fair Value Comparisons

To determine whether sales of OBAs to the United States by the respondents were made at LTFV, we compared export price (''EP'') to NV, as described in the ''Export Price,'' and ''Normal Value'' sections of this notice.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we used EP for all sales reported by Hongda and Transfar. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.,* foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation) in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates.[39]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Therefore, for this preliminary determination we have calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; and (3) representative capital costs.[40] In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value to value FOPs, but when a producer sources an input from a market economy (''ME'') and pays for it in a ME currency, the Department may value the factor using the actual price paid for the input.[41]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents during the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.[42] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Thai import surrogate values a Thai 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) (remanding to Commerce its freight expense calculation to avoid double-counting). A detailed description of all surrogate values used for Hongda and Transfar can be found in the Surrogate Value Memorandum.

For the preliminary determination, in accordance with the Department's practice, we used data from the Thailand Customs Department and other publicly available sources from Thailand in order to calculate surrogate values for Hongda and Transfar FOPs (direct materials and packing materials) and certain movement expenses.[43] In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values

(November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[34] *See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318, 64322 (October 18, 2011).

[35] *See* 19 CFR 351.308(c) and (d) and section 776(c) of the Act; *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at 1.

[36] *See Allied Tube & Conduit Corp.* v. *United States* 132 F. Supp. 2d 1087, 1090 (CIT 2001).

[37] *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying IDM at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000), and accompanying IDM at Comment 2.

[38] *See* Hongda's Preliminary Determination Analysis Memorandum, dated October 27, 2011; *see also* Transfar's Preliminary Determination Analysis Memorandum, dated October 27, 2011.

[39] *See* ''Factor Valuation'' section below for further discussion of surrogate value rates.

[40] *See* Section 773(c)(3)(A)–(D) of the Act.

[41] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill* 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).

[42] *See e.g., New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

[43] *See* Surrogate Value Memorandum at 2.

which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[44] The record shows that data in Thailand's Customs Department, as well as those from the other sources from Thailand, are contemporaneous with the POI, product-specific, and tax-exclusive.[45] In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the International Monetary Fund's Consumer Price Index for Thailand.[46]

Furthermore, with regard to Thailand's import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[47]

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[48] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[49] Therefore, we have not used prices from India, Indonesia or South Korea in calculating Thailand's import-based surrogate values. Additionally, we disregarded prices from NME countries. 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 general export subsidies.[50]

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[51] Where we find 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,*[52] we use the actual purchases of these inputs to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight-average 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.[53] Where appropriate, we add freight to the ME prices of inputs. Transfar claimed that certain of its reported movement expenses were sourced from an ME country and paid for in U.S. dollars. However, the Department did not treat Transfar's ocean freight expenses as ME purchases because Transfar was unable to demonstrate that its PRC freight forwarder was an agent acting on behalf of a ME freight carrier. Specifically, information submitted by Transfar did not include full document traces that would show that the prices, including any agent fee or commission, paid by Transfar were set by the ME freight carrier. *See* Surrogate Value Memorandum at 7.

Section 773(c) of the Act provides that the Department will value FOP 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 FOP, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act.

Previously, 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. 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 February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.[54]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[55] 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

[44] *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).

[45] *See* Surrogate Value Memorandum at 3.

[46] *See* Surrogate Value Memorandum at 2.

[47] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 7; *see also 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 IDM at pages 4–5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying IDM at page 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 IDM at pages 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001).

[48] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[49] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008).

[50] *Id.*

[51] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[52] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*'').

[53] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

[54] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment,* 76 FR 9544 (Feb. 18, 2011).

[55] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

In this preliminary determination, the Department calculated the labor input using the data on industry specific labor cost from the primary surrogate country (*i.e.,* Thailand), as described in *Labor Methodologies.* The Department relied on Chapter 6A labor cost data for Thailand from the International Labour Organization's (''ILO'') Yearbook of Labour Statistics (''Yearbook''). The Department used ILO Chapter 6A labor cost data for the year 2000 because this is the most recent Chapter 6A data available for Thailand. The Department further determined the two-digit description under ISIC–Revision 3–D (''Manufacture of Chemicals and Chemical Products'') to be the best available information because it is specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor cost data reported by Thailand to the ILO under Sub-Classification 24 of the ISIC–Revision 3–D, in accordance with section 773(c)(4) of the Act.[56] For this preliminary determination, the calculated industry-specific wage rate is 66.88 baht per hour. The Department inflated this value to the POI. For further information on the calculation of the wage rate, *see* Surrogate Value Memorandum at 5.

We valued truck freight expenses using a per-unit average rate for price data from the Thailand Board of Investment's 2006 publication, *Costs of Doing Business in Thailand.*[57]

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand for 20 and 40 foot containers published in the World Bank publication, *Doing Business 2011: Thailand.*[58]

We valued international freight using data obtained from the Descartes Carrier Rate Retrieval Database (''Descartes''), which can be accessed via *http://descartes.com/.*[59] The Descartes database is a web-based service, which publishes the ocean freight rates of numerous carriers. We find that this database is accessible to government agencies without charge, in compliance with Federal Maritime Commission regulations and, thus, is a publicly available source. In addition to being publicly available, the Descartes data reflect rates for multiple carriers, report rates on a daily basis, the price data obtained are based on routes that closely correspond to those used by respondents, and are similar to the merchandise subject to this segment. Therefore, the Descartes data is product-specific, publicly available, a broad-market average, and contemporaneous with the period of the segment. Accordingly, the Descartes data is the best available source for valuing international freight on the record because it provides rates that are representative of the entire period of the segment and a broader representation of product-specificity.

However, while the Department finds that the Descartes data is the most superior source for valuing international freight on the record, to make the source less impractical, the Department has had to make certain arbitrary calls. The Department has calculated the period-average international freight rate by obtaining rates from multiple carriers for a single day in each quarter of the period of the segment. For any rate that the Department determined was from a non-market economy carrier, the Department has not included that rate in the period-average international freight calculation. Additionally, any charges included in the rate that are covered by brokerage and handling charges that the respondent incurred and are valued by the reported market economy purchase or the appropriate surrogate value, the Department has not included these charges in the calculation.

We valued marine insurance using a rate from RJG Consultants.[60]

Regarding energy, we were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary determination, we have disregarded the respondents' energy inputs (electricity, water, and steam for both Hongda and Transfar) in the calculation of NV, in order to avoid double-counting energy costs that have necessarily been captured in the surrogate financial ratios.[61]

We valued railway freight using price data from the Thailand Board of Investment's 2011 publication, *Costs of Doing Business in Thailand.*[62]

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements from the following producer of comparable merchandise in Thailand: PTT Chemical Public Co. Ltd., covering the fiscal year ending December 2010.[63] The Department may consider other publicly available financial statements for the final determination, as appropriate.

Currency Conversion

Where necessary, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.[64]

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Hongda and Transfar.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[65] This practice is described in Policy Bulletin 05.1.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted average margin
Zhejiang Hongda Chemicals Co., Ltd	Zhejiang Hongda Chemicals Co., Ltd	106.22
Zhejiang Transfar Whyyon Chemical Co., Ltd	Zhejiang Transfar Whyyon Chemical Co., Ltd	126.25
PRC-wide Entity		141.08

[56] The Department preliminarily determined that there is no evidence on the record demonstrating that the cost of labor is overstated. Therefore, the Department did not make any adjustments to the calculation of the surrogate financial ratios.

[57] *See* Surrogate Value Memorandum at 6.

[58] *See id.*

[59] *See id.*

[60] *See id.* at 7.

[61] *See e.g. Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 74 FR 16838 (April 13, 2009) and accompanying IDM at Comment 2.

[62] *See* Surrogate Value Memorandum at 7.

[63] *See id.* at 5–6.

[64] *See id.* at 2.

[65] *See Initiation Notice,* 76 FR at 23559.

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all appropriate entries of OBAs from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of OBAs, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[66] A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days after the date of publication of this notice.[67] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, at a time and location to be determined.[68] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Case briefs, rebuttal briefs and hearing requests should be submitted to the Department electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA Access''). Access to IA Access is available in the Central Records Unit, room 7046 of the main Department of Commerce building.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28537 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–P

[66] *See* 19 CFR 351.309.

[67] *See* 19 CFR 351.310(c).

[68] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margin of sales at LTFV is listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Hermes Pinilla, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0768 and (202) 482–3477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, Clariant Corporation (the petitioner) filed an antidumping petition against imports of stilbenic OBAs from Taiwan. *See* ''Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Petitions Requesting the Imposition of Antidumping Duties,'' dated March 31, 2011 (the petition).

On April 27, 2011, the Department initiated the antidumping duty investigation on stilbenic OBAs from Taiwan. *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 76 FR 23554 (April 27, 2011) (*Initiation Notice*).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the date of publication of the *Initiation Notice. See Initiation Notice,* 76 FR at 23555. The Department

also set aside a period of time for parties to comment on product characteristics for use in the antidumping duty questionnaire. *Id.* We received comments from the respondent on May 10, 2011, and comments from the petitioner on May 10, 17, and 26, 2011, concerning product characteristics.[1] After reviewing the comments received, we have adopted the characteristics and hierarchy as explained in the ''Product Comparisons'' section of this notice, below.

Based on U.S. Customs and Border Protection (CBP) data obtained for U.S imports of subject merchandise during the period of investigation (POI), on May 24, 2011, we selected Teh Fong Min International Co., Ltd. (TFM) and Sun Rise Chemical Ind. Co., Ltd. (Sun Rise) as mandatory respondents in this investigation. On June 10, 2011, Sun Rise provided documentation supporting its claim that it did not have any shipments of subject merchandise to the United States during the POI. *See* the ''Selection of Respondents'' section of this notice, below.

On May 26, 2011, we issued the antidumping questionnaire to TFM and Sun Rise. We received TFM's responses on July 1 and July 20, 2011. Because Sun Rise properly filed a statement of no shipments and provided supporting documentation, it did not respond to our questionnaire.

On May 27, 2011, the International Trade Commission (ITC) published its affirmative preliminary determination that there is a reasonable indication that imports of stilbenic OBAs from Taiwan are materially injuring the U.S. industry, and the ITC notified the Department of its finding. *See Certain Stilbenic Optical Brightening Agents From China and Taiwan,* 76 FR 30967 (May 27, 2011).

On June 9, 2011, we sent a letter to all interested parties inviting comments regarding the Harmonized Tariff Schedule of the United States (HTSUS) subheadings included in the description of the subject merchandise. On June 16, 2011, we received comments from the petitioner. After reviewing the comments received we established the appropriate description of the subject merchandise. *See* the ''Scope of the Investigation'' and the ''Changes to Scope of Investigation'' sections of this notice below.

On July 29, 2011, the petitioner requested that the Department postpone its preliminary determination by 50 days. Because the petitioner made this timely request, in accordance with section 733(c)(1)(A) of the Act, we postponed our preliminary determination by 50 days. *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 76 FR 49443 (August 10, 2011).

On September 12, 2011, the petitioner filed allegations of targeted dumping by TFM. *See* the ''Allegations of Targeted Dumping'' section below.

On October 17, 2011, TFM requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by no more than 135 days in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month to a six-month period.

On October 11, 2011, the petitioner submitted comments for consideration in the preliminary determination.

Period of Investigation

The POI is January 1, 2010, through December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2011. *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The certain stilbenic OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4′-bis [1,3,5-triazin-2-yl][2] amino-2,2′-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.

Excluded from this investigation are all forms of 4,4′-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl][3] amino-2,2′-stilbenedisulfonic acid, C40H40N12O8S2 (''Fluorescent Brightener 71''). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the HTSUS, but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Changes to Scope of Investigation

The Department identified the scope of the investigation in its *Initiation Notice* and set aside a period of time for interested parties to raise issues regarding product coverage. On June 9, 2011, the Department issued a letter to all interested parties inviting comments regarding whether HTSUS subheadings 2921.59.4000 and 2921.59.8090 are appropriate for inclusion in the scope of the investigation. The petitioner submitted comments on June 16, 2011. No other party submitted comments. On July 11, 2011, the Department issued a memorandum detailing its decision to continue to include HTSUS subheadings 2921.59.4000 and 2921.59.8090 in the scope of the investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. In the *Initiation Notice* we stated that we intended to select respondents based on CBP data for U.S. imports under HTSUS number 3204.20.80 during the POI and we invited comments on CBP data and selection of respondents for individual examination. *See Initiation Notice,* 76 FR 23554 (April 27, 2011).

On May 2, 2011, we released the CBP data to all parties with access to information protected by administrative protective order. Based on our review of the CBP data and our consideration of the comments we received from the petitioner on May 9, 2011, and the Department's current workload, we determined that we had the resources to examine two companies. Accordingly, we selected TFM and Sun Rise as

[1] The petitioner's May 26, 2011, comments were submitted in response to the product-matching characteristics identified by the Department in its May 26, 2011, antidumping-duty questionnaire.

[2] The brackets above denote the chemical formula of the subject merchandise. This is not business-proprietary information.

[3] *Id.*

mandatory respondents. These companies also are the publicly identified producers/exporters of subject merchandise. *See* Memorandum to Christian Marsh entitled ''Antidumping Duty Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan—Identification of Respondents,'' dated May 24, 2011.

On June 10, 2011, Sun Rise provided documentation that it did not have any shipments of subject merchandise to the United States during the POI, and a review of entry documents provided by CBP substantiated this claim. *See* Memorandum from Tom Futtner to Laurie Parkhill, entitled ''Request for U.S. Entry Documents—Certain Stilbenic Optical Brightening Agents from Taiwan (A–583–848),'' dated August 3, 2011. Therefore, TFM is the only remaining mandatory respondent in this investigation.

Allegations of Targeted Dumping

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: (1) There is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

On September 12, 2011, the petitioner submitted an allegation of targeted dumping with respect to TFM asserting that the Department should apply the average-to-transaction methodology in calculating TFM's margin. In its allegation, the petitioner asserts that there are patterns of export prices (EPs) for comparable merchandise that differ significantly among customers and regions. The petitioner relied on the Department's targeted-dumping test first introduced in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (*Nails*), and used more recently in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010) (*OCTG).*

Because our analysis includes business-proprietary information, for a full discussion *see* Memorandum to Christian Marsh, entitled ''Less-Than-Fair-Value Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan: Targeted Dumping—Teh Fong Min International Co., Ltd.,'' dated concurrently with this notice (Targeted-Dumping Memo).

A. Targeted-Dumping Test

We conducted customer and regional analyses of targeted dumping for TFM using the methodology we adopted in *Nails* as modified in *Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 55183 (October 27, 2009) (test unchanged in final; 75 FR 14569 (March 26, 2010)), to correct a ministerial error, and as further modified in *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum at Comment 4,[4] to correct for additional ministerial errors.

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. *See* section 777A(d)(1)(B)(i) of the Act and *Nails.* In this test we made all price comparisons on the basis of identical merchandise (*i.e.,* by control number or CONNUM). The test procedures are the same for the customer and regional allegations of targeted dumping. We based all of our targeted-dumping calculations on the U.S. net price which we determined for U.S. sales by TFM in our standard margin calculations. For further discussion of the test and the results, *see* the Targeted-Dumping Memo.

As a result of our analysis, we preliminarily determine that the overall proportion of TFM's U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of the Act and our practice as discussed in *Nails* is insufficient to establish a pattern of EPs for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department has determined that criteria established in 777A(d)(1)(B)(i) of the Act have not been met.

Therefore, we have applied the average-to-average methodology to all sales. *See* Targeted-Dumping Memo for further discussion.

Date of Sale

Section 19 CFR 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see* also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany,* 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

TFM reported its sales using shipment date as the date of sale, because its shipments occurred prior to invoicing. On July 14, August 11, September 12, October 11, and October 12, 2011, the petitioner commented on the use of the date of TFM's long-term contracts as the date of sale for U.S. sales made pursuant to these contracts. Based on information on the record concerning these long-term contracts, we have determined that the evidence does not establish that the material terms of sale are set on contract date. TFM has demonstrated that either party has the right to renegotiate the prices during the pendency of the contract, that such renegotiations have occurred, that the quantities established in the contracts are merely estimates and that that there are no firm minimum quantity requirements.

See TFM's August 26, 2011, supplemental questionnaire response at pages 6–7, and exhibit SE–13. Therefore, because date of shipment precedes invoice date and the record evidence otherwise demonstrates that shipment date is when final price and quantity are determined, we have used shipment date as the date of sale. For one customer, multiple sales were included in one invoice, and we calculated a ''weighted average ship date'' to use as the date of sale. *See* the TFM Analysis Memorandum to the file dated concurrently with this notice for additional information (Preliminary Analysis Memo).

Recently the U.S. Court of International Trade upheld the Department's decision to use invoice

[4] *See also* Targeted-Dumping Memo for further discussion.

date for U.S. sales governed by long-term contracts because the evidence on the record did not demonstrate that the respondent's U.S. customers were contractually bound such that their material terms of sale were finally and firmly established on the contract date. *See Yieh Phui Enterprise Co.* v. *United States* (Slip Op. 11–107) (August 24, 2011). Similarly, the long-term contracts here do not set the material terms of sale; the terms are set at date of shipment, which occurs before date of invoice. Therefore, in accordance with our practice and judicial precedent we have selected the date of shipment as the date of sale.

Fair-Value Comparisons

To determine whether sales of stilbenic OBAs to the United States by TFM were made at LTFV during the POI, we compared normal value to constructed export price, as described in the ''Normal Value'' and ''Constructed Export Price'' sections of this notice in accordance with section 777A(d)(1)(B) of the Act. We made average-to-average comparisons for all sales to the United States and provided offsets for non-dumped comparisons.

Product Comparisons

We received comments from the respondent on May 10, 2011, and comments from the petitioner on May 10, 17, and 26, 2011, concerning product characteristics. After reviewing the comments received, we have adopted the characteristics and hierarchy identified by the petitioner, with one exception. Instead of matching on the basis of the exact concentration of active brightening agents, we specified a range of active ingredients in the hierarchy. *See* our May 26, 2011, antidumping-duty questionnaire for TFM. We have relied on four criteria for matching U.S. sales of subject merchandise to normal value: category, stage, state, and range of concentration of active ingredients.

U.S. Price

We based the United States price on constructed export price (CEP), as defined in section 772(a) of the Act, because the first sale to an unaffiliated party was made by TFM's U.S. affiliate, TFM North America, Inc.

We calculated CEP based on the packed Free on Board, Cost, Insurance and Freight, or delivered price to unaffiliated purchasers in the United States. We made deductions, as appropriate, for discounts. We also made deductions for any movement expenses in accordance with sections 772(c)(2)(A) and 772(d) of the Act. *See* the Preliminary Analysis Memo for additional information.

Normal Value

After testing comparison-market viability, we calculated normal value as stated in the ''Constructed Value'' section of this notice.

A. Comparison-Market Viability

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price. Section 773(a)(1)(C) of the Act contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or third country to serve as a viable basis for calculating normal value, we compared the respondent's volumes of home-market and third-country sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. The aggregate volume of TFM's sales of foreign like product in the home market was not greater than five percent of its sales of subject merchandise to the United States. Therefore, TFM's sales in the home market are not viable as a comparison market. Similarly, TFM's sales of foreign like product to third-country markets were not greater than five percent of its sales of subject merchandise to the United States. Therefore, none of these markets are viable as a comparison market.

B. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(e) of the Act, we calculated constructed value (CV) based on the sum of the cost of materials and fabrication, selling, general and administrative expenses, interest expenses, U.S packing expenses, and profit. We relied on information submitted by the respondent for materials and fabrication costs, general and administrative expenses, interest expenses, and U.S. packing costs. Based on the review of record evidence, TFM did not appear to experience significant changes in the cost of manufacturing during the period of investigation. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

Because the Department has determined for purposes of this preliminary determination that TFM does not have a viable comparison market, we could not determine selling expenses and profit under section 773(e)(2)(A) of the Act. Therefore, we relied on section 773(e)(2)(B) of the Act to determine these amounts.

The statute does not establish a hierarchy for selecting among the alternative methodologies provided in section 773(e)(2)(B) of the Act for determining selling expenses and profit. *See* Statement of Administrative Action Accompanying the URAA, H.R. Rep. No. 103–316, Vol. 1, at 840 (1994). Alternative (iii) of section 773(e)(2)(B) of the Act specifies that selling and profit may be calculated based on any other reasonable method in connection with the home-market sale of merchandise that is in the same general category of products as the subject merchandise as long as the result is not greater than the amount realized by exporters or producers ''in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise'' (*i.e.,* the ''profit cap'').

Because TFM did not produce and sell any other merchandise in the same general category as stilbenic OBAs and because no other producers/exporters are being individually examined in this investigation, we calculated TFM's selling expenses and profit under section 773(e)(2)(B)(iii) of the Act. We used the selling expenses and profit from the publicly available financial statements for the fiscal year most contemporaneous with the POI of a company in Taiwan, Everlight Chemical Industrial Corporation (Everlight). In addition to producing subject merchandise, Everlight also produces other chemicals, including OBAs that are used in other applications. For a more detailed discussion *see* Memorandum to Neal Halper from Gina Lee, regarding ''Constructed Value Calculation Adjustments for the Preliminary Determination,'' dated concurrently with this notice (Preliminary Cost Memo).

As explained above, TFM does not produce other merchandise in the same general category of products as the subject merchandise. Thus, a profit cap cannot be calculated as there is no information regarding profit that is normally realized in connection with the sale of merchandise in the same general category for consumption in the home market. *See* Preliminary Cost

Memo. Therefore because there is no information available on the profit cap on the record, as facts available, we are applying option (iii), without quantifying a profit cap.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination for TFM.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct CBP to suspend liquidation of all entries of stilbenic OBAs from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated below, as follows: (1) The rate for TFM will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 12.03 percent, as discussed in the ''All-Others Rate'' section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Weighted-average margin (percent)
Teh Fong Min International Co., Ltd	12.03

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. TFM is the only respondent in this investigation for which the Department has calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for TFM, 12.03 percent. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy,* 64 FR 30750, 30755 (June 8, 1999), and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 72 FR 30753, 30757 (June 4, 2007) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia,* 72 FR 60636 (October 25, 2007)).

Disclosure

We will disclose the calculations performed in our preliminary determination to interested parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of stilbenic OBAs from Taiwan are materially injuring, or threatening material injury to, the U.S. industry (see section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed below, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. *See* 19 CFR 351.309(c)(2). Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on CD–ROM.

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party. *See* also 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for filing a rebuttal brief at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain the following: (1) The party's name, address, and telephone number; (2) a list of participants; (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 17, 2011, TFM requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by no more than 135 days after the date of publication of this notice in the **Federal Register**. At the same time, TFM requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month to

a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) Our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28555 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Establishment of the Advisory Committee on Supply Chain Competitiveness and Solicitation of Nominations for Membership

AGENCY: International Trade Administration, DOC.

ACTION: Notice of establishment of the Advisory Committee on Supply Chain Competitiveness and solicitation of nominations for membership.

SUMMARY: Pursuant to provisions under the Federal Advisory Committee Act, 5 U.S.C. App., the Under Secretary of Commerce for International Trade announces the establishment of the Advisory Committee on Supply Chain Competitiveness (the Committee) by the Secretary of Commerce. The Committee shall advise the Secretary regarding the development and administration of programs and policies to expand the competitiveness of U.S. supply chains, including programs and policies to expand U.S. exports of goods, services, and technology related to supply chain in accordance with applicable United States regulations. This notice also requests nominations for membership.

DATES: Nominations for members must be received on or before December 14, 2011.

Nominations

The Secretary of Commerce invites nominations to the committee of U.S. citizens who will represent U.S. companies that trade internationally, or U.S. trade associations or U.S. private sector organizations with activities focused on the competitiveness of U.S. supply chain goods and services. No member may represent a company that is majority owned or controlled by a foreign government entity or foreign government entities. Nominees meeting the eligibility requirements will be considered based upon their ability to carry out the goals of the Committee as articulated above. Self-nominations will be accepted. If you are interested in nominating someone to become a member of the Committee, please provide the following information:

(1) Name, title, and relevant contact information (including phone, fax, and email address) of the individual requesting consideration;

(2) A sponsor letter on the company's, trade association's, or organization's letterhead containing a brief description why the nominee should be considered for membership;

(3) Short biography of nominee including credentials;

(4) Brief description of the company, trade association, or organization to be represented and its business activities; company size (number of employees and annual sales); and export markets served;

(5) An affirmative statement that the nominee is not a Federally registered lobbyist, and that the nominee understands that if appointed, the nominee will not be allowed to continue to serve as a Committee member if the nominee becomes a Federally registered lobbyist;

(6) An affirmative statement that the nominee meets all Committee eligibility requirements.

Please do not send company, trade association, or organization brochures or any other information.

Nominations may be emailed to: *richard.boll@trade.gov* or faxed to the attention of Richard Boll at 202–482–2669, or mailed to Richard Boll, Office of Service Industries, *Room CC118,* U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and must be received before *December 14.* Nominees selected for appointment to the Committee will be notified by return mail.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Service Industries, *Room CC118,* U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Committee is being established under the discretionary authority of the Secretary, in response to an identified need for consensus advice from U.S. industry to the U.S. government on the development and administration of programs and policies to expand the competitiveness of U.S. supply chains. The Federal Advisory Committee Act (5 U.S.C. App.) governs the Committee and sets forth standards for the formation and use of advisory committees.

For purposes of the Committee, the ''supply chain'' refers broadly to the combination of goods, services, and technology related to supply chain operations. In advising on the development and administration of programs and policies to expand the global competitiveness of the U.S. supply chains, the Committee shall provide detailed policy and technical advice, information, and recommendations to the Federal Government regarding:

1. National, state, or local factors that inhibit the efficient domestic and international movement of goods from point of origin to destination, and the competitiveness of domestic and international supply chains;

2. Infrastructure capacity, inter- and cross-modal connectivity, investment, regulatory, and intra- or inter-governmental coordination factors that affect supply chain competitiveness, goods movement, and sustainability;

3. Emerging trends in goods movement that affect, or could impact, supply chain competitiveness; and

4. Metrics that can be used to quantify supply chain performance.

II. Structure, Membership, and Operation

The Committee shall consist of approximately 40 members appointed by the Secretary in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. Members shall represent U.S. companies, U.S. trade associations, and U.S. private sector organizations that use or operate elements of U.S. global supply chain, with activities focused on the competitiveness of the U.S. supply chain and its component goods, services, and technologies. Membership shall reflect the diversity of goods and services movement activities, including a variety of users that ship through the global supply chain, entities that operate various parts of the supply chain, and individual academic experts in the field. Membership will also be diverse in terms of organization size, and geographic location.

All members will come from the private sector. There will be two types of members: (1) Individual experts from

academia, and (2) representatives of a U.S. industry sector (through a U.S. entity or organization). Individual experts will be appointed as Special Government Employees (SGEs) under 18 U.S.C. 202 and will be required to comply with certain ethics laws and rules, including filing a Confidential Financial Disclosure form. The representatives will express the views and interests of their industry sector and will likely be members of a U.S. entity or organization that is within the relevant sector. Because they serve in a representative capacity, they will not be SGEs. Prospective nominees should designate the capacity in which they choose to serve and identify either their area of expertise or the U.S. industry sector they wish to represent.

Each member of the Committee must be a U.S. citizen, and not registered as a foreign agent under the Foreign Agents Registration Act. Additionally, a member must not be a Federally registered lobbyist. No member may represent a company that is majority owned or controlled by a foreign government entity or entities.

Appointments will be made without regard to political affiliation.

Members shall serve at the pleasure of the Secretary from the date of appointment to the COMMITTEE to the date on which the COMMITTEE's charter terminates (normally two years).

The Secretary shall designate the Committee Chair and Vice Chair from selections made by the members. The Chair and Vice Chair will serve in those positions at the pleasure of the Secretary. The Department, through the Assistant Secretary for Manufacturing and Services, may establish subcommittees or working groups from among the Committee's members as may be necessary, and consistent with FACA, the FACA implementing regulations, and applicable Department of Commerce policies. Such subcommittees or working groups may not function independently of the chartered committee and must report their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the Committee nor can they report directly to the Secretary or his or her designee. The Assistant Secretary for Manufacturing and Services shall designate a Designated Federal Officer (DFO) from among the employees of the Office of Service Industries. The DFO will approve or call all of the advisory committee meetings, prepare and approve all meeting agendas, attend all committee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the Secretary.

III. Meetings

The Committee shall, to the extent practicable, the Committee shall meet as necessary, but not less than once per year. No quorum is required. Additional meetings may be called at the discretion of the Secretary or his designee.

IV. Compensation

Members of the COMMITTEE will not be compensated for their services or reimbursed for their travel expenses.

Dated: October 31, 2011.

David Long,

Director, Office of Service Industries.

[FR Doc. 2011–28539 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Telecommunications and Information Administration

DEPARTMENT OF HOMELAND SECURITY

[Docket No. 110829543–1654–02]

National Protection and Programs Directorate; Models To Advance Voluntary Corporate Notification to Consumers Regarding the Illicit Use of Computer Equipment by Botnets and Related Malware; Extension of Comment Period

AGENCY: National Institute of Standards and Technology U.S. Department of Commerce; Department of Homeland Security.

ACTION: Notice; Extension of comment period.

SUMMARY: The Department of Commerce's National Institute of Standards and Technology announces that the closing deadline for submission of comments responsive to the September 21, 2011, request for information on the requirements of, and possible approaches to, creating a voluntary industry code of conduct to address the detection, notification and mitigation of botnets, has been extended until 5 p.m. Eastern Standard Time (EST) on November 14, 2011. Comments received between November 4, 2011, the due date for comments announced in the September 21, 2011 notice, and publication of this notice in the **Federal Register**, are deemed to be timely.

DATES: Comments are due by 5 p.m. EST on November 14, 2011.

ADDRESSES: Written comments may be submitted by mail to the National Institute of Standards and Technology at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4822, Washington, DC 20230. Submissions may be in any of the following formats: HTML, ASCII, Word, rtf, or pdf. Online submissions in electronic form may be sent to *Consumer_Notice_RFI@nist.gov*. Paper submissions should include a compact disc (CD). CDs should be labeled with the name and organizational affiliation of the filer and the name of the word processing program used to create the document. Comments will be posted at *http://www.nist.gov/itl/*.

FOR FURTHER INFORMATION CONTACT: For general questions about this amended Notice contact: Jon Boyens, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899, *jon.boyens@nist.gov*. Please direct media inquires to NIST's Office of Public Affairs at (301) 975–NIST.

SUPPLEMENTARY INFORMATION: On September 21, 2011, the U.S. Department of Commerce and U.S. Department of Homeland Security requested information on the requirements of, and possible approaches to, creating a voluntary industry code of conduct to address the detection, notification and mitigation of botnets. (See 76 FR 58466.) The Department of Commerce announces that the closing deadline for submission of comments responsive to the September 21, 2011 notice has been extended until 5 p.m. Eastern Standard Time (EST) on November 14, 2011. Comments received between November 4, 2011, the due date for comments announced in the September 21, 2011 notice, and publication of this notice in the **Federal Register**, are deemed to be timely.

Dated: October 31, 2011.

Patrick Gallagher,

Under Secretary of Commerce for Standards and Technology.

Rand Beers,

Under Secretary, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–28528 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Aleutian Islands Pollock Fishery Requirements

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 January 3, 2012.

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 Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a renewal of a currently approved information collection.

The Consolidated Appropriations Act of 2004 (Pub. L. 108–199) was signed into law on January 23, 2004. Section 803 of this law allocates the Aleutian Islands (AI) directed pollock fishery to the Aleut Corporation for economic development of Adak, Alaska. The statute permits the Aleut Corporation to authorize one or more agents for activities necessary for conducting the AI directed pollock fishery. Management provisions for the AI directed pollock fishery include: restrictions on the harvest specifications for the AI directed pollock fishery; provisions for fishery monitoring; reporting requirements; and an AI Chinook salmon prohibited species catch limit that, when reached, would close the existing Chinook salmon savings areas in the AI.

II. Method of Collection

Participants are identified and approved through a letter from the Aleut Corporation which is approved by National Marine Fisheries Service (NMFS). This letter includes a list of approved participants. A copy of the letter must be on each participating vessel.

III. Data

OMB Control Number: 0648–0513.

Form Number: None.

Type of Review: Regular submission (renewal of a currently approved collection).

Affected Public: Business or other for-profits organizations.

Estimated Number of Respondents: 6.

Estimated Time Per Response: Annual AI Pollock Fishery Participant Letter, 16 hours; copy of NMFS Approval to Participants, 5 minutes; and appeal process, 20 hours.

Estimated Total Annual Burden Hours: 134.

Estimated Total Annual Cost to Public: $31 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 31, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–28478 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA626

Marine Mammals; File Nos. 16163, 16160, and 15569

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

ACTION: Notice; receipt of applications.

SUMMARY: Notice is hereby given that the Northwest Fisheries Science Center (NWFSC, Dr. M. Bradley Hanson, Principal Investigator) [File No. 16163], 2725 Montlake Blvd. East, Seattle, WA 98112–2097; The Whale Museum (Jenny Atkinson, Responsible Party) [File No. 16160], PO Box 945, Friday Harbor, WA 98250; and The Center for Whale Research (CWR; Kenneth C. Balcomb III, Responsible Party) [File No. 15569], PO Box 1577, Friday Harbor, WA 98250, have applied in due form for permits to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before December 5, 2011.

ADDRESSES: The applications and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16163, 16160, 16111, and 15569 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

Written comments on these applications should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: The following Analysts at (301) 427–8401: Joselyd Garcia-Reyes [for File No. 16160]; Laura Morse [for File No. 16163]; and Jennifer Skidmore [for File Nos. 15569, 16160, 16163].

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Each application is summarized below. For specific take numbers of each species, please refer to the associated application.

File No. 16163: Northwest Fisheries Science Center, requests a permit to conduct scientific research on thirty seven species of cetaceans and unidentified mesoplodon and baleen species in all U.S. and international waters in the Pacific Ocean, including waters of Alaska, Washington, Oregon, California, and Hawaii. Seven of the 37 species to be targeted for research are listed as endangered or have a stock listed as endangered: blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), humpback whale (*Megaptera novaeangliae*), North Pacific right whale (*Eubalaena japonica*), sei whale (*B. borealis*), killer whale (*Orcinus orca*) Southern Resident stock, and sperm whale (*Physeter macrocephalus*). The false killer whale (*Pseudorca crassidens*) Hawaiian insular stock is proposed for listing under the ESA. Seven species of pinnipeds may be incidentally harassed from research activities, including three species listed as endangered: Steller sea lions (*Eumetopias jubatus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Hawaiian monk seals (*Monachus schauinslandi*). The purposes of the proposed research are to study: (1) Abundance, population structure, social organization, fecundity, and mortality; (2) Distribution, seasonal movements, and habitat use; (3) Responses to anthropogenic impacts; (4) Health assessment including contaminant burdens, breath and fecal borne pathogens; and (5) Prey availability including prey selection and energetics. Harassment of all species of cetaceans may occur through vessel approach for sighting surveys, photographic identification, behavioral research, opportunistic sampling (breath, sloughed skin, fecal material, and prey remains), acoustic imaging with echosounders, and aerial surveys. Twenty seven cetacean species and unidentified mesoplodon species would be biopsied, dart, and/or suction-cup tagged. Ultrasound sampling would be directed at killer whales including the Southern Resident stock. Active acoustic playback studies would be directed at Southern Resident killer whales. Import and export of marine mammal prey specimens, sloughed skin, fecal and breath samples obtained is requested for research purposes. Research would occur over a five-year period.

File No. 16160: The Whale Museum requests a five year permit to study marine mammals in the inland waters of Washington State. The purpose of the proposed research is to monitor and record vessel activities around marine mammal species routinely encountered by commercial and recreational vessels. This research would contribute to a long-term data set (Orca Master) that has provided critical information on characterizing annual vessel trends around Southern Resident killer whales and an evaluation of the effectiveness of federal, state and local marine wildlife guidelines and regulations through the Soundwatch program. Research methods would include close vessel approach for photo-identification, behavioral observation, and monitoring. The main focus species are killer whales from the Southern Resident stock. Additionally, Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), eastern gray whale (*Eschrichtius robustus*), humpback whale, killer whale, and minke whale (*B. acutorostrata*) may be harassed.

File No. 15569: The Center for Whale Research requests a five-year permit to continue research currently authorized under Permit No. 532–1822–02 with the goal of determining the population size and structure of the ESA-listed Southern Resident killer whales and other ecotypes of killer whales throughout their range in the Eastern North Pacific Ocean. The core area of research will be the inland marine waters of Washington State, but the study area will opportunistically include the wider area of the coastal eastern North Pacific from the southern boundary of California to Alaskan waters east of Kodiak Island, including all territorial waters up to 200 nautical miles offshore. Research methods would primarily involve photo-identification of individuals and behavioral observations, but other benign techniques such as fecal sampling and prey sampling in trail of whales, remote measuring (aerial and laser techniques), and passive acoustic recording will be conducted. Other non-target species that may be opportunistically taken include 17 cetacean species and four pinnipeds species. Those species that are listed as endangered include the blue whale, fin whale, sei whale, humpback whale, and North Pacific right whale, in addition to the threatened eastern stock of Steller sea lions.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permits. The draft EA is available for review and comment simultaneous with the scientific research permit applications.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents May Be Reviewed in the Following Locations

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941.

Dated: October 28, 2011.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–28550 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA777

Atlantic Highly Migratory Species; Advisory Panel

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

ACTION: Notice; solicitation of nominations.

SUMMARY: NMFS solicits nominations for the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the HMS AP when preparing and implementing Fishery Management Plans (FMPs) or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill one-third (11) of the seats on the HMS AP for a 3-year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership in the HMS AP.

DATES: Nominations must be received on or before December 5, 2011.

ADDRESSES: You may submit nominations and requests for the Advisory Panel Statement of Organization, Practices, and Procedures by any of the following methods:

- *Email:* *HMSAP.Nominations@noaa.gov.* Include in the subject line the following identifier: ''HMS AP Nominations.''
- *Mail:* Jenni Wallace, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* (301) 713–1917.

FOR FURTHER INFORMATION CONTACT: Jenni Wallace at (301) 427–8503.

SUPPLEMENTARY INFORMATION:

Introduction

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of Advisory Panels to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment. NMFS has consulted with the HMS AP on the FMP for Atlantic Tunas, Swordfish, and Sharks (final in April 1999), Amendment 1 to the Billfish FMP (final in April 1999), Amendment 1 to the 1999 FMP (final in November 2003), the Consolidated HMS FMP (final in July 2006), Amendments 1, 2, and 3 to the Consolidated HMS FMP (June 2009, April 2008, and March 2010, respectively), and on the development of the upcoming Amendments 4, 5, and 6 to the Consolidated HMS FMP.

Procedures and Guidelines

A. Nomination Procedures for Appointments to the Advisory Panel

Nomination packages should include:

1. The name of the applicant or nominee and a description of his/her interest in HMS or in particular species of sharks, swordfish, tunas, or billfish;
2. Contact information, including mailing address, phone, and email of the applicant or nominee;
3. A statement of background and/or qualifications;
4. A written commitment that the applicant or nominee shall actively participate in good faith in the meetings and tasks of the HMS AP; and
5. A list of outreach resources that the applicant has at his/her disposal to communicate HMS issues to various interest groups.

Tenure for the HMS AP

Member tenure will be for 3 years (36 months), with approximately one-third of the members' terms expiring on December 31 of each year. Nominations are sought for terms beginning January 2012 and expiring December 2014.

B. Participants

Nominations for the HMS AP will be accepted to allow representation from commercial and recreational fishing interests, the scientific community, and the environmental community who are knowledgeable about Atlantic HMS and/or Atlantic HMS fisheries. Current representation on the HMS AP, as shown in Table 1, consists of 12 members representing commercial interests, 12 members representing recreational interests, 4 members representing environmental interests, 4 academic representatives, and the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Chairperson. Each HMS AP member serves a 3-year term with approximately one-third (11) of the total number of seats (33) expiring on December 31 of each year. NMFS seeks to fill 5 commercial, 3 recreational, 2 environmental, and 1 academic vacancy by December 31, 2011. NMFS will seek to fill vacancies based primarily on maintaining the current representation from each of the sectors. NMFS also considers species expertise and representation from the fishing regions (Northeast, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean) to ensure the diversity and balance of the AP. Table 1 includes the current representation on the HMS AP by sector, region and species with terms that are expiring identified in bold. It is not meant to indicate that NMFS will only consider persons who have expertise in the species or fishing regions that are listed. Rather, NMFS will aim toward having as diverse and balanced an AP as possible.

TABLE 1—CURRENT REPRESENTATION ON THE HMS AP BY SECTOR, REGION, AND SPECIES

[Terms that are expiring are in bold. NMFS tries to maintain diversity and balance in representation among fishing regions and species; the AP Bylaws only dictate representation by Sector.]

Sector	Fishing region	Species	Date appointed	Date term expires
Academic	**All**	**Tuna**	**1/1/2009**	**12/31/2011**
Academic	All	Tuna	1/1/2010	12/31/2012
Academic	All	Shark	1/1/2010	12/31/2012
Academic	All	Swordfish/HMS	1/1/2010	12/31/2012
Commercial	**Northeast**	**HMS**	**1/1/2009**	**12/31/2011**
Commercial	**Northeast**	**Tuna**	**1/1/2009**	**12/31/2011**
Commercial	**Southeast**	**HMS**	**1/1/2009**	**12/31/2011**
Commercial	**Northeast**	**Tuna**	**1/1/2009**	**12/31/2011**
Commercial	**Northeast**	**Tuna**	**1/1/2009**	**12/31/2011**
Commercial	Mid-Atlantic	Shark	1/1/2010	12/31/2012
Commercial	Southeast	Swordfish/Tuna	1/1/2010	12/31/2012
Commercial	Northeast	Tuna	1/1/2011	12/31/2013
Commercial	Mid-Atlantic	HMS/Shark	1/1/2011	12/31/2013
Commercial	Southeast	Swordfish	1/1/2011	12/31/2013
Commercial	Gulf of Mexico	Shark	1/1/2011	12/31/2013

TABLE 1—CURRENT REPRESENTATION ON THE HMS AP BY SECTOR, REGION, AND SPECIES—Continued

[Terms that are expiring are in bold. NMFS tries to maintain diversity and balance in representation among fishing regions and species; the AP Bylaws only dictate representation by Sector.]

Sector	Fishing region	Species	Date appointed	Date term expires
Commercial	Gulf of Mexico	Shark	1/1/2011	12/31/2013
Environmental	**All**	**Shark**	**1/1/2009**	**12/31/2011**
Environmental	**All**	**Shark**	**1/1/2009**	**12/31/2011**
Environmental	All	Tuna	1/1/2011	12/31/2013
Environmental	All	Tuna	1/1/2011	12/31/2013
Recreational	**Northeast**	**Tuna/Shark**	**1/1/2009**	**12/31/2011**
Recreational	**Mid-Atlantic**	**HMS**	**1/1/2009**	**12/31/2011**
Recreational	**Mid-Atlantic**	**Tuna**	**1/1/2009**	**12/31/2011**
Recreational	Northeast	Tuna/Shark	1/1/2010	12/31/2012
Recreational	Southeast	Swordfish	1/1/2010	12/31/2012
Recreational	Northeast	Tuna	1/1/2010	12/31/2012
Recreational	All	HMS	1/1/2010	12/31/2012
Recreational	Mid-Atlantic	HMS	1/1/2010	12/31/2012
Recreational	Southeast	HMS	1/1/2011	12/31/2013
Recreational	Mid-Atlantic	HMS	1/1/2011	12/31/2013
Recreational	All	Billfish	1/1/2011	12/31/2013
Recreational	Gulf of Mexico	HMS	1/1/2011	12/31/2013

Regardless of fishing region or species, each sector must be adequately represented, and the intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the HMS AP. Criteria for membership include one or more of the following: (1) Experience in the HMS recreational fishing industry; (2) experience in the HMS commercial fishing industry; (3) experience in fishery-related industries (*e.g.,* marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, national, or international organization representing marine fisheries; or environmental, governmental, or academic interests dealing with HMS.

Five additional members on the HMS AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

C. Meeting Schedule

Meetings of the HMS AP will be held as frequently as necessary but are routinely held twice each year in the spring and fall. The meetings may be held in conjunction with public hearings.

Dated: October 31, 2011.

Steven Thur,

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

[FR Doc. 2011–28551 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA777

Atlantic Highly Migratory Species; Advisory Panel

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

ACTION: Notice; solicitation of nominations.

SUMMARY: NMFS solicits nominations for the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the HMS AP when preparing and implementing Fishery Management Plans (FMPs) or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill one-third (11) of the seats on the HMS AP for a 3-year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership in the HMS AP.

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Commercial	**Northeast**	**Tuna**	**1/1/2009**	**12/31/2011**
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Commercial	Gulf of Mexico	Shark	1/1/2011	12/31/2013
Commercial	Gulf of Mexico	Shark	1/1/2011	12/31/2013
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Environmental	**All**	**Shark**	**1/1/2009**	**12/31/2011**
Environmental	All	Tuna	1/1/2011	12/31/2013
Environmental	All	Tuna	1/1/2011	12/31/2013
Recreational	**Northeast**	**Tuna/Shark**	**1/1/2009**	**12/31/2011**
Recreational	**Mid-Atlantic**	**HMS**	**1/1/2009**	**12/31/2011**
Recreational	**Mid-Atlantic**	**Tuna**	**1/1/2009**	**12/31/2011**
Recreational	Northeast	Tuna/Shark	1/1/2010	12/31/2012
Recreational	Southeast	Swordfish	1/1/2010	12/31/2012
Recreational	Northeast	Tuna	1/1/2010	12/31/2012
Recreational	All	HMS	1/1/2010	12/31/2012
Recreational	Mid-Atlantic	HMS	1/1/2010	12/31/2012
Recreational	Southeast	HMS	1/1/2011	12/31/2013
Recreational	Mid-Atlantic	HMS	1/1/2011	12/31/2013
Recreational	All	Billfish	1/1/2011	12/31/2013
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Regardless of fishing region or species, each sector must be adequately represented, and the intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the HMS AP. Criteria for membership include one or more of the following: (1) Experience in the HMS recreational fishing industry; (2) experience in the HMS commercial fishing industry; (3) experience in fishery-related industries (*e.g.,* marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, national, or international organization representing marine fisheries; or environmental, governmental, or academic interests dealing with HMS.

Five additional members on the HMS AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

C. Meeting Schedule

Meetings of the HMS AP will be held as frequently as necessary but are routinely held twice each year in the spring and fall. The meetings may be held in conjunction with public hearings.

Dated: October 31, 2011.

Steven Thur,

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

[FR Doc. 2011–28553 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2011–0054]

Discontinuing the Mass Mailing of Paper Fee Schedules to Registered Attorneys, Agents, and Deposit Account Holders

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is discontinuing the mass mailing of revised paper fee schedules to registered attorneys, agents, and deposit account holders when fees are adjusted due to enactment of legislation or fluctuations in the Consumer Price Index. Since a substantial majority of filings and fee payments are submitted on-line, and the most up-to-date fee schedule is always available and maintained on-line, the USPTO has discontinued the mass mailing of the paper fee schedules. The current fee schedule is essentially built into the on-line systems (e.g., EFS–Web, TEAS, accessible through the USPTO home page, etc.), which display the current fee amounts required at the time of submitting the payment.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Matthew Lee, Office of Finance, Receipts Accounting Division, by telephone at (571) 272–6343; or by mail addressed to: Mail Stop 16, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The USPTO is discontinuing the mass mailing of revised paper fee schedules that have been sent to registered attorneys, agents, and deposit account holders since the early 1990s. Since 1998, the revised paper fee schedules have always indicated that the most up-to-date fee amounts and information are maintained on the USPTO Web site. This availability of the fee amounts and information renders paper fee schedules obsolete.

The purpose of the mass mailings was to provide the practitioners with advance notice of upcoming fee adjustments at a time when filings and fee payments were mainly submitted by mail. Due to the lead time needed for finalizing, bulk printing, and mass mailing of the paper fee schedules, the paper fee schedules have sometimes been mailed out weeks after the new fees are already in effect. Currently over 90 percent of patent applications are filed on-line via EFS–Web, and over 98 percent of trademark applications are filed on-line via TEAS.

The official, current USPTO fee schedule will continue to be available and maintained on the USPTO Web site at *http://www.uspto.gov/about/offices/cfo/finance/fees.jsp.* Additionally, those wishing to receive a paper copy of the current USPTO fee schedule can obtain this copy by calling the USPTO Contact Center at (571) 272–1000 or (800) 786–9199.

Dated: October 28, 2011.

Teresa Stanek Rea,

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

[FR Doc. 2011–28536 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2011–0057]

Grant of Interim Extension of the Term of U.S. Patent No. 5,407,914; SURFAXIN® (Lucinactant)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued an Order Granting Interim Extension for a third one-year interim extension of the term of U.S. Patent No. 5,407,914.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755, or by email to *Mary.Till@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On September 19, 2011, Discovery Laboratories Inc., on behalf of patent

owner Scripps Research Institute, timely filed an application under 35 U.S.C. 156(d)(5) for an additional interim extension of the term of U.S. Patent No. 5,407,914. The patent claims the human drug product, SURFAXIN® (lucinactant), and a method of using SURFAXIN® (lucinactant). The application indicates that a New Drug Application, NDA No. 21–746, for the human drug product SURFAXIN® (lucinactant) has been filed, and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional one year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent, November 17, 2011, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 5,407,914 is granted for a period of one additional year from the extended expiration date of the patent, *i.e.,* until November 17, 2012.

Dated: October 28, 2011.

Robert W. Bahr,

Acting Associate Commissioner for Patent Examination Policy, United States Patent and Trademark Office.

[FR Doc. 2011–28499 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2011–0069]

National Medal of Technology and Innovation Nomination Evaluation Committee Meeting

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of closed meeting.

SUMMARY: The National Medal of Technology and Innovation (NMTI) Nomination Evaluation Committee will meet in closed session on Friday, November 18, 2011. The primary purpose of the meeting is to discuss the relative merits of persons, teams and companies nominated for the 2011 NMTI Medal.

DATES: The meeting will convene Friday, November 18, 2011, at approximately 9 a.m., and adjourn at approximately 5 p.m.

ADDRESSES: The meeting will be held at the United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Vikrum Aiyer, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–8818, or by electronic mail: *nmti@uspto.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the NMTI Nomination Evaluation Committee, chartered to the United States Department of Commerce, will meet at the United States Patent and Trademark Office campus in Alexandria, Virginia.

The Secretary of Commerce is responsible for recommending to the President prospective NMTI Medal recipients. The NMTI Nomination Evaluation Committee evaluates the nominations received pursuant to public solicitation and makes its recommendations for the Medal to the Secretary. Committee members are distinguished experts in the fields of science, technology, business and patent law drawn from both the public and private sectors and are appointed by the Secretary for three-year terms.

The NMTI Nomination Evaluation Committee was established in accordance with the Federal Advisory Committee Act (FACA). The Committee meeting will be closed to the public in accordance with FACA and 5 U.S.C. 552b(c)(4), (6) and (9)(B), because the discussion of the relative merit of the Medal nominations is likely to disclose information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy; premature disclosure of the Committee's recommendations would be likely to significantly frustrate implementation of the Medal Program; and the meeting will include a Department of Commerce Ethics Division presentation and question and answer session which may be closed to protect the privileged and confidential personal financial information of Committee members.

The Chief Financial Officer and Assistant Secretary for Administration, United States Department of Commerce, formally determined on October 26, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the meeting may be closed because Committee members are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4), (6) and (9)(B). Due to closure of this meeting, copies of any minutes of the meeting will not be available. A copy of the determination is available for public inspection at the United States Patent and Trademark Office.

Dated: October 28, 2011.

Teresa Stanek Rea,

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

[FR Doc. 2011–28500 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting—Emergency Meeting Notice

This notice that an emergency meeting was held is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: The Commission held an emergency closed meeting on October 31, 2011 at 12 p.m. The Commission, by a recorded unanimous vote, determined that the agency business required that business of the agency required that the meeting be held at that time.

PLACE: Three Lafayette Center, 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Registrant Financial Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, Assistant Secretary of the Commission, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–28607 Filed 11–1–11; 11:15 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12–C0003]

Spin Master, Inc. and Spin Master, Ltd., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Spin Master, Inc. and Spin Master, Ltd., containing a civil penalty of $1,300,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 18, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 12–C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 26, 2011.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Spin Master, Inc. (''SMI'') and Spin Master Ltd. (''SML'') (collectively ''Spin Master''), and U.S. Consumer Product Safety Commission (''Commission'') staff (''Staff''), enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle staff's allegations set forth below.

Parties

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. SMI is a corporation, organized and existing under the laws of Delaware, with its principal offices located in Los Angeles, California. At all relevant times, SMI imported and sold toys.

4. SML is a corporation, organized and existing under the laws of Canada, with its principal offices located in Toronto, Ontario, Canada. At all relevant times, SML developed and marketed toys.

5. At all relevant times, SMI was and is a wholly-owned subsidiary of Spin Master US Holdings, Inc., which is a wholly-owned subsidiary of SML.

Staff Allegations

6. From on or about April 16, 2007, to on or about November 7, 2007, SMI imported into the United States, sold to U.S. consumers, and sold to U.S. retailers, approximately 750,000 units of Aqua Dots. Aqua Dots were children's arts and crafts toys that consisted of tiny beads of different colors that stuck together when sprayed with water, allowing children to create various shapes and designs. Aqua Dots were marketed and sold in different kits with various accessories.

7. Aqua Dots are ''consumer product[s],'' and, at all relevant times, SMI was a ''manufacturer'' and ''retailer'' of those consumer products, and SML was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), (11), and (13), 15 U.S.C. 2052(a)(5), (8), (11), and (13).

8. By mid-October 2007, Spin Master had received reports that children and a dog had become ill and received emergency medical treatment after ingesting Aqua Dots; however, Spin Master failed to report to the Commission.

9. On October 18, 2007, Spin Master learned that Aqua Dots contained 1,4-butylene glycol (''TMG''). TMG is a chemical that, upon ingestion, metabolizes to gamma hydroxybutyrate (GHB), a Schedule I controlled substance. On October 19, 2007, Spin Master received information that TMG is harmful if swallowed, and that, upon ingestion, it targets the kidneys and central nervous system.

10. In the days and weeks that followed, Spin Master continued to receive reports of children falling ill after ingesting Aqua Dots. The firm also received reports of children falling ill after ingesting a similar product manufactured by the same overseas factory using the same ingredients list containing TMG.

11. On November 2, 2007, Spin Master received a report that a child became ill after ingesting Aqua Dots. On November 5, 2007, Commission staff contacted Spin Master and notified them of that ingestion incident, which had occurred in October 2007.

12. On November 7, 2007, Spin Master, in cooperation with the Commission, voluntarily recalled the product.

13. In the press release announcing the recall, Spin Master acknowledged that ''[c]hildren who swallow the beads can become comatose, develop respiratory depression, or have seizures.''

14. While the firm had enlisted an outside testing agency to evaluate the toxicity of the product, the testing was inadequate. Notwithstanding the testing results, the incident data reflective of human experience suggested that the product was toxic.

15. During the relevant time, Spin Master obtained information that reasonably supported the conclusion that Aqua Dots contained a defect or possible defect that could create a substantial product hazard, or that Aqua Dots created an unreasonable risk of serious injury or death. Accordingly, CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Spin Master to inform the Commission immediately of the defect and risk.

16. Spin Master knowingly failed to inform the Commission immediately about Aqua Dots, as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). Under CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4), these failures constituted prohibited acts, and pursuant to CPSA section 20, 15 U.S.C. 2069, subjected Spin Master to civil penalties.

17. Aqua Dots are ''toxic'' within the meaning of FHSA section 2(g), 15 U.S.C. 1261(g), and are a ''hazardous substance'' within the meaning of FHSA section 2(f)(1)(A), 15 U.S.C. 1261(f)(1)(A).

18. As a toy or other article intended for use by children that is a hazardous substance, or that contains a hazardous substance that is susceptible to access by a child to whom such toy or article is entrusted, Aqua Dots are a ''banned hazardous substance'' within the meaning of FHSA section 2(q)(1)(A), 15 U.S.C. 1261(q)(1)(A).

19. During the relevant time, under FHSA § 5(c)(5), 15 U.S.C. 1264(c)(5), Spin Master acquired knowledge that Aqua Dots were toxic and constituted a banned hazardous substance, and were prohibited from being imported and sold. Pursuant to FHSA section 5(c)(1), 15 U.S.C. 1264(c)(1), Spin Master's prohibited acts subjected it to civil penalties.

Spin Master's Responsive Allegations

20. Spin Master denies staff's allegations that Spin Master knowingly violated the CPSA and FHSA; and Spin Master denies any liability and wrongdoing.

21. Spin Master desires to settle this matter without the expense of litigation.

22. The Agreement and the payments made thereunder are made in compromise of disputed and unproven allegations and are not admissions of liability of any kind, whether legal or factual.

23. Spin Master, Inc. was the distributor of Aqua Dots in the United States, and was not involved in the design or manufacture, nor was it the creator or inventor, of Aqua Dots. Spin Master Ltd., located in Toronto, Canada, was the parent of Spin Master, Inc.

24. Spin Master had no involvement in the production of the product and was not given any insight into the chemical composition of the product, which at all times remained a closely guarded trade secret by the manufacturer.

25. Spin Master ensured the product underwent all legally required testing under FHSA regulations, CPSC lead content requirements, Canadian Hazardous Products regulations, and ASTM labeling standards before distribution of the product began, and the product passed all such testing. The distributor, SMI, began distributing the product in the United States in April 2007. Approximately 1,335,151 units of Aqua Dots were sold.

26. Spin Master went above and beyond all legally required testing and engaged a highly regarded independent testing agency to conduct live animal acute toxicity testing (''live animal testing'') on the product on June 6, 2007.

27. On August 10, 2007, Spin Master received and reasonably relied upon the

official live animal testing results from the independent testing agency that stated: ''[the product] MEETS the following requirement(s): Classification of not being toxic as defined in and tested per 16 CFR 1500.3(c)(2)(i)(A), 'Acute oral toxicity' (FHSA regulations.)'' SMI received oral confirmation of this test result as early as August 1, 2007.

28. It became apparent only after the November 7, 2007 recall that the live animal toxicity testing conducted by independent testing agencies was not performed at an appropriate standard of professional care.

29. In October 2007, Spin Master was advised of ingestion incidents arising from the ingestion of large quantities of a similar product and that governmental authorities in countries other than the United States had investigated those incidents and found that product to be safe.

30. On October 18, 2007, Spin Master was advised that the manufacturer of the product had switched the chemical formulation from 1,5 Pentamethylene Glycol to contain 1,4–Butylene Glycol (''TMG''). Upon being advised of the chemical switch, the distributor began investigating the product. On October 19, 2007, the distributor received a Material Safety Data Sheet (''MSDS'') for TMG.

31. On October 25, 2007, Spin Master was advised of the results of a Toxicological Risk Assessment performed by a board-certified toxicologist, which stated that none of the ingredients in the product were banned or restricted for use in consumer products in the United States, and that the product containing TMG would be safe under the FHSA regulations when used as intended or under circumstances involving reasonably foreseeable misuse, assuming that as many as 50 beads would be ingested in a single event. The distributor was also advised that 4 grams of the product, or 50 beads, would have to be consumed to cause significant harm by ingestion.

32. In early November 2007, Spin Master received a detailed report of an ingestion incident involving the product.

33. On November 7, 2007, Spin Master voluntarily recalled the product in conjunction and cooperation with the Commission.

Agreement of the Parties

34. Under the CPSA and FHSA, the Commission has jurisdiction over this matter and, for purposes of this agreement only, over Spin Master.

35. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Spin Master, nor does it constitute a determination by the Commission, that Spin Master knowingly violated the CPSA and FHSA, or a concession by either party of the accuracy of the representations set forth in the other party's Responsive Allegations.

36. In settlement of staff's allegations, Spin Master shall pay a civil penalty in the total amount of one million three hundred thousand dollars ($1,300,000.00). The civil penalty shall be paid in two (2) installments as follows: six hundred fifty thousand dollars ($650,000.00) shall be paid on or before January 10, 2012; and six hundred fifty thousand dollars ($650,000.00) shall be paid on or before January 10, 2013. Both payments shall be made electronically to the Commission via: *http://www.pay.gov.*

37. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

38. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Spin Master knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Spin Master failed to comply with the CPSA, the FHSA, and their underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

39. The parties may publicize the terms of the Agreement and the Order.

40. The Agreement and the Order shall apply to, and be binding upon, Spin Master and each of its successors and assigns.

41. The Commission issues the Order under the provisions of the CPSA and FHSA, and violation of the Order may subject Spin Master and each of its successors and assigns to appropriate legal action.

42. The Agreement may be used in interpreting the Order. The Agreement constitutes the entire agreement and understanding between the parties related to the subject matter contained herein and is subject to the terms of the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto, executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

43. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Spin Master agree that severing the provision materially affects the purpose of the Agreement and the Order.

SPIN MASTER, INC.

Dated: October 19, 2011 by:

Ronnen Harary,
Director and CEO, 5890 West Jefferson Boulevard, Suite E, Los Angeles, CA 90116.

SPIN MASTER LTD.

Dated: October 19, 2011 by:

Ronnen Harary,
Director and CEO, 450 Front Street West, Toronto, Ontario.

Dated: October 19, 2011 by:

Ronald Y. Rothstein, Esq.,
Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601, Counsel for Spin Master, Inc., and Spin Master Ltd.

Dated: October 19, 2011 by:

Frederick B. Locker, Esq.,
Locker, Greenberg & Brainin, 420 5th Avenue, Suite 2602, New York, NY 10018, Counsel for Spin Master, Inc., and Spin Master Ltd.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF
Office of the General Counsel.

Cheryl A. Falvey,
General Counsel.

Mary B. Murphy,
Assistant General Counsel.

Dated: October 19, 2011 by:

Seth B. Popkin,
Lead Trial Attorney.

Renee McCune,
Attorney.

Order

Upon consideration of the Settlement Agreement entered into among Spin Master, Inc. and Spin Master Ltd. (collectively ''Spin Master''), and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and, for purposes of this agreement only, over Spin Master, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Spin Master shall pay a civil penalty in the total amount of one million three hundred thousand dollars ($1,300,000.00). The civil penalty shall be paid in two (2) installments as follows: Six hundred fifty thousand dollars ($650,000.00) shall be paid on or before January 10, 2012; and six hundred fifty thousand dollars ($650,000.00) shall be paid on or before January 10, 2013. Both payments shall be made electronically to the Commission via: *http://www.pay.gov.* Upon the failure of Spin Master to make any of the foregoing payments when due, the total amount of the civil penalty shall become due and payable immediately, and interest on the unpaid amount shall accrue and be paid by Spin Master at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *26th* day of *October,* 2011.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–28558 Filed 11–2–11; 8:45 am]

BILLING CODE 6355–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Instructions for Implementing Sustainable Locations for Federal Facilities in Accordance With Executive Order 13514

AGENCY: Council on Environmental Quality.

ACTION: Notice of availability of sustainable locations for Federal facilities implementing instructions.

SUMMARY: The Chair of the Council on Environmental Quality (CEQ) has issued instructions to Federal agencies for integrating sustainable facility location decision-making principles into agency policies and practices, as required under Executive Order 13514 (''E.O. 13514''), ''Federal Leadership in Environmental, Energy, and Economic Performance,'' signed by President Obama on October 5, 2009. 74 FR 52117, Oct. 8, 2009. The purpose of the Executive Order is to establish an integrated strategy toward sustainability in the Federal Government including, efforts to operate high performance sustainable buildings in sustainable locations, and strengthen the vitality and livability of the communities for Federal agencies. Section 2(f) of the E.O. 13514 directs agencies to ''advance regional and local integrated planning by * * * participating in regional transportation planning and recognizing existing community transportation infrastructure; * * * ensuring that planning for new Federal facilities or new leases includes consideration of sites that are pedestrian friendly, near existing employment centers, and accessible to public transit, and emphasizes existing central cities and, in rural communities, existing or planned town centers.'' Section 5(b) of E.O. 13514 directs the Chair of CEQ to issue instructions to implement the Executive Order. The Instructions for Implementing Sustainable Locations for Federal Facilities are now available at: *http://www.whitehouse.gov/administration/eop/ceq/sustainability/sustainable-locations.*

DATES: The Instructions for Implementing Sustainable Locations for Federal Facilities were issued on September 15, 2011.

ADDRESSES: The Instructions for Implementing Sustainable Locations for Federal Facilities are available at: *http://www.whitehouse.gov/administration/eop/ceq/sustainability/sustainable-locations.*

FOR FURTHER INFORMATION CONTACT: Michelle Moore, Federal Environmental Executive, Office of the Federal Environmental Executive, (202) 395–5750.

SUPPLEMENTARY INFORMATION: Section 5(b) of E.O. 13514 authorizes the Chair of the Council on Environmental Quality (CEQ) to issue instructions to implement the Executive Order. The ''Instructions for Implementing Sustainable Locations for Federal Facilities'' provide formal direction from the Chair of CEQ to Federal agencies to improve sustainability performance by ensuring a balanced consideration and evaluation of land use, the built environment, cost, security, mission need and competition on facility location decision-making. The Instructions ensure that agencies make responsible choices in the siting of facilities that are owned or leased by the Federal government, striking an appropriate balance among cost, security and sustainability, while meeting agency mission need and ensuring competition. The Instructions apply only to Federal agencies, operations, and programs. Agencies are expected to implement the Instructions as part of their compliance with E.O. 13514.

Authority: E.O. 13514, 74 FR 52117

Dated: October 28, 2011.

Nancy H. Sutley,

Chair.

[FR Doc. 2011–28474 Filed 11–2–11; 8:45 am]

BILLING CODE 3125–W0–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 278. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Actual Expense Allowance (AEA) changes announced in Bulletin Number 194 remain in effect. Bulletin Number 278 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mrs. Allison Lovelady, (571) 372–1271.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 277. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 278 are updated rates for Alaska.

Dated: October 31, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	110		96		206	2/1/2011
ADAK						
01/01 - 12/31	120		79		199	7/1/2003
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	181		104		285	2/1/2011
09/16 - 04/30	99		96		195	2/1/2011
BARROW						
01/01 - 12/31	159		95		254	10/1/2002
BETHEL						
01/01 - 12/31	157		99		256	7/1/2011
BETTLES						
01/01 - 12/31	135		62		197	10/1/2004
CLEAR AB						
01/01 - 12/31	90		82		172	10/1/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/1/2006
COPPER CENTER						
09/16 - 05/14	95		95		190	1/1/2011
05/15 - 09/15	139		99		238	1/1/2011
CORDOVA						
01/01 - 12/31	95		130		225	1/1/2011
CRAIG						
10/01 - 04/30	99		78		177	11/1/2011
05/01 - 09/30	129		81		210	11/1/2011
DELTA JUNCTION						
05/01 - 09/30	145		65		210	1/1/2011
10/01 - 04/30	115		64		179	1/1/2011
DENALI NATIONAL PARK						
06/01 - 08/31	135		88		223	1/1/2011

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/01	- 05/31	90		84		174	1/1/2011
DILLINGHAM							
05/15	- 10/15	185		111		296	1/1/2011
10/16	- 05/14	169		109		278	1/1/2011
DUTCH HARBOR-UNALASKA							
01/01	- 12/31	121		99		220	2/1/2011
EARECKSON AIR STATION							
01/01	- 12/31	90		77		167	6/1/2007
EIELSON AFB							
05/05	- 09/15	175		107		282	1/1/2011
09/16	- 05/04	75		98		173	1/1/2011
ELFIN COVE							
01/01	- 12/31	200		45		245	8/1/2010
ELMENDORF AFB							
05/01	- 09/15	181		104		285	2/1/2011
09/16	- 04/30	99		96		195	2/1/2011
FAIRBANKS							
05/05	- 09/15	175		107		282	1/1/2011
09/16	- 05/04	75		98		173	1/1/2011
FOOTLOOSE							
01/01	- 12/31	175		18		193	10/1/2002
FT. GREELY							
05/01	- 09/30	145		65		210	1/1/2011
10/01	- 04/30	115		64		179	1/1/2011
FT. RICHARDSON							
05/01	- 09/15	181		104		285	2/1/2011
09/16	- 04/30	99		96		195	2/1/2011
FT. WAINWRIGHT							
05/05	- 09/15	175		107		282	1/1/2011
09/16	- 05/04	75		98		173	1/1/2011
GAMBELL							
01/01	- 12/31	105		39		144	1/1/2011
GLENNALLEN							
05/15	- 09/15	139		99		238	1/1/2011

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/16 - 05/14		95		95		190	1/1/2011
HAINES							
01/01 - 12/31		107		101		208	1/1/2011
HEALY							
06/01 - 08/31		135		88		223	1/1/2011
09/01 - 05/31		90		84		174	1/1/2011
HOMER							
05/15 - 09/15		167		117		284	1/1/2011
09/16 - 05/14		79		115		194	1/1/2011
JUNEAU							
05/16 - 09/15		149		99		248	8/1/2011
09/16 - 05/15		135		98		233	8/1/2011
KAKTOVIK							
01/01 - 12/31		165		86		251	10/1/2002
KAVIK CAMP							
01/01 - 12/31		150		69		219	10/1/2002
KENAI-SOLDOTNA							
05/01 - 08/31		179		96		275	8/1/2011
09/01 - 04/30		79		86		165	8/1/2011
KENNICOTT							
01/01 - 12/31		259		115		374	2/1/2011
KETCHIKAN							
05/01 - 09/30		140		90		230	2/1/2011
10/01 - 04/30		99		86		185	2/1/2011
KING SALMON							
05/01 - 10/01		225		91		316	10/1/2002
10/02 - 04/30		125		81		206	10/1/2002
KLAWOCK							
05/01 - 09/30		129		81		210	11/1/2011
10/01 - 04/30		99		78		177	11/1/2011
KODIAK							
05/01 - 09/30		141		120		261	2/1/2011
10/01 - 04/30		99		117		216	2/1/2011
KOTZEBUE							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01	- 12/31	189		114		303	2/1/2011
KULIS AGS							
05/01	- 09/15	181		104		285	2/1/2011
09/16	- 04/30	99		96		195	2/1/2011
MCCARTHY							
01/01	- 12/31	259		115		374	2/1/2011
MCGRATH							
01/01	- 12/31	165		69		234	10/1/2006
MURPHY DOME							
05/05	- 09/15	175		107		282	1/1/2011
09/16	- 05/04	75		98		173	1/1/2011
NOME							
01/01	- 12/31	150		126		276	2/1/2011
NUIQSUT							
01/01	- 12/31	180		53		233	10/1/2002
PETERSBURG							
01/01	- 12/31	110		96		206	2/1/2011
POINT HOPE							
01/01	- 12/31	200		49		249	1/1/2011
POINT LAY							
01/01	- 12/31	225		51		276	8/1/2011
PORT ALEXANDER							
01/01	- 12/31	150		43		193	8/1/2010
PORT ALSWORTH							
01/01	- 12/31	135		88		223	10/1/2002
PRUDHOE BAY							
01/01	- 12/31	170		68		238	1/1/2011
SELDOVIA							
09/16	- 05/14	79		115		194	1/1/2011
05/15	- 09/15	167		117		284	1/1/2011
SEWARD							
10/01	- 04/30	85		96		181	2/1/2011
05/01	- 09/30	172		106		278	2/1/2011
SITKA-MT. EDGECUMBE							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01	- 09/30	119		114		233	2/1/2011
10/01	- 04/30	99		112		211	2/1/2011
SKAGWAY							
05/01	- 09/30	140		90		230	2/1/2011
10/01	- 04/30	99		86		185	2/1/2011
SLANA							
10/01	- 04/30	99		55		154	2/1/2005
05/01	- 09/30	139		55		194	2/1/2005
SPRUCE CAPE							
05/01	- 09/30	141		120		261	2/1/2011
10/01	- 04/30	99		117		216	2/1/2011
ST. GEORGE							
01/01	- 12/31	129		55		184	6/1/2004
TALKEETNA							
01/01	- 12/31	100		89		189	10/1/2002
TANANA							
01/01	- 12/31	150		126		276	2/1/2011
TOK							
05/01	- 09/30	89		129		218	2/1/2011
10/01	- 04/30	71		126		197	2/1/2011
UMIAT							
01/01	- 12/31	350		35		385	10/1/2006
VALDEZ							
09/16	- 04/30	119		111		230	2/1/2011
05/01	- 09/15	189		120		309	2/1/2011
WAINWRIGHT							
01/01	- 12/31	175		83		258	1/1/2011
WASILLA							
10/01	- 04/30	99		103		202	2/1/2011
05/01	- 09/30	153		108		261	2/1/2011
WRANGELL							
05/01	- 09/30	140		90		230	2/1/2011
10/01	- 04/30	99		86		185	2/1/2011
YAKUTAT							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	105		94		199	1/1/2011
AMERICAN SAMOA							
AMERICAN SAMOA							
	01/01 - 12/31	139		122		261	12/1/2010
GUAM							
GUAM (INCL ALL MIL INSTAL)							
	01/01 - 12/31	159		86		245	7/1/2011
HAWAII							
[OTHER]							
	01/01 - 12/31	104		109		213	7/1/2011
CAMP H M SMITH							
	01/01 - 12/31	177		116		293	7/1/2011
EASTPAC NAVAL COMP TELE AREA							
	01/01 - 12/31	177		116		293	7/1/2011
FT. DERUSSEY							
	01/01 - 12/31	177		116		293	7/1/2011
FT. SHAFTER							
	01/01 - 12/31	177		116		293	7/1/2011
HICKAM AFB							
	01/01 - 12/31	177		116		293	7/1/2011
HONOLULU							
	01/01 - 12/31	177		116		293	7/1/2011
ISLE OF HAWAII: HILO							
	01/01 - 12/31	104		109		213	7/1/2011
ISLE OF HAWAII: OTHER							
	01/01 - 12/31	180		116		296	7/1/2011
ISLE OF KAUAI							
	01/01 - 12/31	243		127		370	7/1/2011
ISLE OF MAUI							
	01/01 - 12/31	169		120		289	7/1/2011
ISLE OF OAHU							
	01/01 - 12/31	177		116		293	7/1/2011
KEKAHA PACIFIC MISSILE RANGE FAC							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	243		127		370	7/1/2011
KILAUEA MILITARY CAMP							
	01/01 - 12/31	104		109		213	7/1/2011
LANAI							
	01/01 - 12/31	249		145		394	7/1/2011
LUALUALEI NAVAL MAGAZINE							
	01/01 - 12/31	177		116		293	7/1/2011
MCB HAWAII							
	01/01 - 12/31	177		116		293	7/1/2011
MOLOKAI							
	01/01 - 12/31	131		97		228	7/1/2011
NAS BARBERS POINT							
	01/01 - 12/31	177		116		293	7/1/2011
PEARL HARBOR							
	01/01 - 12/31	177		116		293	7/1/2011
SCHOFIELD BARRACKS							
	01/01 - 12/31	177		116		293	7/1/2011
WHEELER ARMY AIRFIELD							
	01/01 - 12/31	177		116		293	7/1/2011
MIDWAY ISLANDS							
MIDWAY ISLANDS							
	01/01 - 12/31	125		62		187	7/1/2011
NORTHERN MARIANA ISLANDS							
[OTHER]							
	01/01 - 12/31	55		72		127	10/1/2002
ROTA							
	01/01 - 12/31	130		93		223	7/1/2011
SAIPAN							
	01/01 - 12/31	121		94		215	7/1/2011
TINIAN							
	01/01 - 12/31	85		74		159	7/1/2011
PUERTO RICO							
[OTHER]							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	62		57		119	10/1/2002
AGUADILLA							
	01/01 - 12/31	124		113		237	9/1/2010
BAYAMON							
	01/01 - 12/31	195		128		323	9/1/2010
CAROLINA							
	01/01 - 12/31	195		128		323	9/1/2010
CEIBA							
	01/01 - 12/31	210		141		351	11/1/2010
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]							
	01/01 - 12/31	210		141		351	11/1/2010
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]							
	01/01 - 12/31	195		128		323	9/1/2010
HUMACAO							
	01/01 - 12/31	210		141		351	11/1/2010
LUIS MUNOZ MARIN IAP AGS							
	01/01 - 12/31	195		128		323	9/1/2010
LUQUILLO							
	01/01 - 12/31	210		141		351	11/1/2010
MAYAGUEZ							
	01/01 - 12/31	109		112		221	9/1/2010
PONCE							
	01/01 - 12/31	149		87		236	9/1/2010
SABANA SECA [INCL ALL MILITARY]							
	01/01 - 12/31	195		128		323	9/1/2010
SAN JUAN & NAV RES STA							
	01/01 - 12/31	195		128		323	9/1/2010
VIRGIN ISLANDS (U.S.)							
ST. CROIX							
	04/15 - 12/14	135		92		227	5/1/2006
	12/15 - 04/14	187		97		284	5/1/2006
ST. JOHN							
	04/15 - 12/14	163		98		261	5/1/2006
	12/15 - 04/14	220		104		324	5/1/2006

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. THOMAS							
04/15	- 12/14	240		105		345	5/1/2006
12/15	- 04/14	299		111		410	5/1/2006
WAKE ISLAND							
WAKE ISLAND							
01/01	- 12/31	145		42		187	7/1/2011

[FR Doc. 2011–28515 Filed 11–2–11; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting: correction.

SUMMARY: On October 28, 2011, the Department of Energy (DOE) published a notice of open meeting announcing a meeting on November 14, 2011, of the Environmental Management Site-Specific Advisory Board, Idaho National Laboratory (76 FR 66917). This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or *email: pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.gov/*.

Correction

In the **Federal Register** of October 28, 2011, in FR Doc. 2011–27921, on page 66917, please make the following correction:

In that notice under **DATES**, second column, second paragraph, the meeting date was incorrectly stated as Tuesday, November 14, 2011. The statement should be changed to Tuesday, November 15, 2011.

Issued at Washington, DC, on October 28, 2011.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2011–28503 Filed 11–2–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. VHE–001]

Publication of the Petition for Waiver From Empire Comfort Systems From the Department of Energy Vented Home Heating Equipment Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver and Request for Public Comments.

SUMMARY: This notice announces receipt of and publishes the Empire Comfort Systems Inc. (Empire) petition for waiver (hereafter, ''petition'') from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of vented home heating equipment. The waiver request pertains to certain basic models of Empire's condensing type direct heaters. In its petition, Empire provides an alternate test procedure, ANSI/ASHRAE Standard 103–1993,''Method of Testing for AFUE of Residential Central Furnaces and Boilers.'' The alternate procedure omits those sections of ANSI/ASHRAE 103–1993 that do not apply to condensing type direct heaters. DOE solicits comments, data, and information concerning Empire's petition and the suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to the Empire Petition until, but no later than December 5, 2011.

ADDRESSES: You may submit comments, identified by case number ''VHE–001,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. VHE–001] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *Email: Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796. *Email: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the vented home heating equipment that is the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for vented home heating equipment is contained in 10 CFR part 430, subpart B, appendix O.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) The petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

II. Petition for Waiver of Test Procedure

On July 21, 2011, Empire filed a petition for waiver for new condensing type direct heater models from the test procedure applicable to vented home heating equipment set forth in 10 CFR part 430, Subpart B, Appendix O. Empire is designing direct heaters that incorporate condensing features. In its petition, Empire seeks a waiver from the existing DOE test procedure applicable to its Mantis vented gas fireplace systems under 10 CFR part 430 because the existing test procedure does not account for condensing type heating equipment. Therefore, Empire has asked to use an alternate test procedure, ANSI/ASHRAE Standard 103–1993, ''Method of Testing for AFUE of Residential Central Furnaces and Boilers,'' omitting those sections that cover air temperature rise and static pressure, which cannot be applied to condensing type heating equipment. Empire did not request an interim waiver pursuant to 10 CFR 430.27(a)(2).

III. Summary and Request for Comments

Through today's notice, DOE announces receipt of Empire's petition for waiver from the DOE test procedure. DOE publishes Empire's petition for waiver pursuant to 10 CFR

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

430.27(b)(1)(iv). The petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Empire's specified condensing direct heaters. DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Kenneth J. Belding, Vice President—Delivery Support Services, Empire Comfort Systems, Inc., 918 Freeburg Avenue, Belleville, Illinois 62220–2623. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on October 27, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

July 21, 2011

(revised August 25, 2011)

U.S. DEPARTMENT OF ENERGY
Building Technologies Program
Test Procedure Waiver
1000 Independence Avenue SW
Mail Stop EE–2J
Washington, DC 20585–0121

Gentlemen:

This is a request for a waiver to the current, prescribed method of testing efficiency for the models listed on Certificate of Compliance 1764957 (111946) from CSA International (enclosed).

The current D.O.E. test procedures, found in the **Federal Register** Part IV10 CFR430, notice dated May 1997, do not address condensing type heating equipment. Mantis is a condensing type direct heater, vented with PVC.

The Mantis was tested for efficiency using portions of the ANSI/ASHRAE Standard 103–1993, Method of Testing for AFUE of Residential Central Furnaces and Boilers. This standard was used as a guideline for test procedures and calculations through steady state, including condensate collection, cool-down, heat-up and cyclic tests. Sections of the ANSI/ASHRAE Standard 103–1993 covering air temperature rise and static pressure cannot be applied to this type of equipment and were omitted.

Enclosed you will find an email correspondence from Phil Gauthier of the AHRI Direct Heating Certification Program suggesting we request a waiver with associated pertinent information.

Also enclosed, for your review, is our request for test with Intertek and subsequent test results. I have also included our correspondence with Phil Gauthier of AHRI recommending we request this waiver.

As requested, in Word format, please see below those sections of ASHRAE 103–1993 that do not apply to Mantis testing.

4. 4.1.2, 4.2.2, 4.2.3, 4.3.1, 4.4.3, 4.5.1, 4.5.2.1, 4.5.2.2, 4.5.2.4, 4.6.1, 4.7.1, 4.7.2, 4.7.3, 4.8.1, 4.8.2, 4.8.3, 4.9.1, 4.9.2, 4.9.3, 4.10.2, 4.11.2, 4.11.3

5. All

6. 6.1, 6.10.1, 6.10.3, 6.11.2

7. 7.1, 7.2, 7.3, 7.4, 7.5, 7.7

8. 8.1, 8.2.1, 8.2.1.2, 8.2.14, 8.2.1.5.1, 8.2.1.5.2, 8.2.1.5.3, 8.2.2.1, 8.2.2.3, 8.2.2.4, 8.2.3, 8.3, 8.4.1.2, 8.4.2, 8.6, 8.8

9. 9.1.1.2, 9.1.1.3, 9.1.2.2.2, 9.1.2.3.2, 9.1.2.3.3, 931.3, 9.1.4, 9.3, 9.4

We appreciate your consideration in this matter.

Respectfully,

EMPIRE COMFORT SYSTEMS, INC.

Kenneth J. Belding

Vice President—Delivery Support Services

KJB:crb

Enc.

[FR Doc. 2011–28501 Filed 11–2–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0209; FRL–9486–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before December 5, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0209, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822IT, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both

EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0209, which is available for public viewing online at *http://www.regulations.gov,* or in person at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Renewal)

ICR Numbers: EPA ICR Number 1805.06, OMB Control Number 2060–0377.

ICR Status: This ICR is scheduled to expire on December 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Hazardous air pollutant (HAP) emissions from chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, National Emission Standards for Hazardous Air Pollutants (NESHAP) were promulgated for this source category.

The control of HAP emissions from chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills requires the installation of properly designed equipment and the operation and maintenance (O&M) of that equipment. This NESHAP, covering emissions from chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills, relies on the capture and/or reduction of HAP emissions by recovery furnaces, smelt dissolving tanks (SDTs), lime kilns, soda, and sulfite combustion units.

Pulp mill owners or operators (respondents) are required to submit initial notifications, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Respondents are required to monitor and keep records of specific operating parameters for each control device and to perform and document periodic inspections of the closed vent and wastewater conveyance systems. In order to reduce the burden as much as possible, the compliance monitoring and recordkeeping requirements are designed to cover parameters that are already being monitored as part of the manufacturing process. All respondents must submit semiannual summary reports of monitored parameters, and they must submit an additional monitoring report during each quarter in which monitored parameters were outside the ranges established in the standard or during initial performance tests. A source identified to be out of compliance with the NESHAP will be required to submit quarterly reports until the Administrator is satisfied that the source has corrected its compliance problem.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance of 40 CFR part 63, subpart MM, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions date and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 526 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.

Estimated Number of Respondents: 111.

Frequency of Response: Initially, occasionally, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 126,207.

Estimated Total Annual Cost: $12,630,524, which includes $11,918,524 in labor costs, no capital/startup costs, and $712,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: The adjustment decrease in burden from the most recently approved ICR is due to a more accurate estimate of existing and anticipated new sources. After consulting the Office of Air Quality Planning and Standards (OAQPS) and trade associations, our data indicates that there are approximately 111 sources subject to the rule, as compared with the active ICR that shows 130 sources. No new facilities are expected to be constructed over the next three years of this ICR. The decline in the number of sources is due mainly to plant closures. This industry is undergoing widespread consolidation and corporate restructuring. However, there is an increase in cost per labor hours due to the updated labor rates.

Because there are no new sources with reporting requirements, no capital/startup costs are incurred. The only cost that is incurred is for the operation and maintenance (O&M) of the monitoring equipment.

Dated: October 27, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–28524 Filed 11–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9486–5]

Highlights of the Exposure Factors Handbook: 2011 Update Release of Final Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the release of the report *Highlights of the Exposure Factors Handbook: 2011 Update.* The *Highlights of the Exposure Factors Handbook: 2011 Update* provides a summary of the recommended exposure factors extracted from the *Exposure Factors Handbook* published on September 30, 2011. The *Highlights* document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. The parent *Exposure Factors Handbook* provides detailed data and analyses on various physiological and behavioral factors commonly used in assessing exposure to environmental chemicals.

The *Highlights of the Exposure Factors Handbook: 2011 Update* (EPA/600/R–10/030) is available via the Internet at *http://www.epa.gov/ncea.*

DATES: This report was posted publically on October 13, 2011.

ADDRESSES: The report is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of printed copies will be available from the Information Management Team, NCEA; *telephone:* (703) 347–8561; *facsimile:* (703) 347–8691. If you are requesting a printed copy, please provide your name, your mailing address, and the document title.

FOR FURTHER INFORMATION CONTACT: For additional information, contact the National Center for Environmental Assessment; Linda Phillips; *telephone:* (703) 347–0366; or *email: phillips.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The *Highlights of the Exposure Factors Handbook* was developed to provide a brief overview of the content of the *Exposure Factors Handbook: 2011 Edition* and to facilitate access to its exposure factors recommendations. As such, it contains a subset of the information provided in the *Handbook.* Excerpts of each chapter of the *Handbook* and summaries of key recommendations are provided. This *Highlights* document is intended for use by exposure assessors, within the Agency as well as those outside, as a reference tool and source of summary information of exposure factors information. It may be used by scientists, economists, and other interested parties as a source of data and/or U.S. EPA recommendations on numeric estimates for behavioral and physiological characteristics needed to estimate exposure to environmental agents.

Dated: October 27, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–28522 Filed 11–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9486–3]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a public meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT represents diverse interests from academia, industry, non-governmental organizations, and local, State, and tribal governments. The purpose of this meeting is to continue developing recommendations to the Administrator regarding actions that EPA can take to address critical issues surrounding Workforce Development, and actions the Agency can take to be more effective in serving the needs of Vulnerable Populations. The Council will also begin discussing recommendations to the Agency in response to the National Academy of Sciences Report on ''Incorporating Sustainability in the U.S. Environmental Protection Agency''. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ofacmo/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a two-day public meeting on Monday, November 14, 2011, from 8:30 a.m. to 5:30 p.m. and Tuesday, November 15, 2011, from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the EPA Potomac Yard Conference Center, One Potomac Yard, 2777 S. Crystal Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, *joyce.mark@epa.gov,* (202) 564–2130, U.S. EPA, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Eugene Green at (202) 564–2432 or *green.eugene@epa.gov* by Monday, November 7, 2011. The meeting is open to the public, with limited seating on a first-come, first-served basis. Members of the public wishing to attend should contact Eugene Green at (202) 564–2432 or *green.eugene@epa.gov* by November 7, 2011.

Meeting Access: For information on access or services for individuals with disabilities, please contact Eugene Green at (202) 564–2432 or *green.eugene@epa.gov.* To request accommodation of a disability, please contact Eugene, preferably 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 24, 2011.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2011–28523 Filed 11–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 3, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0207.

Title: Part 11—Emergency Alert System (EAS).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions and State, Local, or Tribal Government.

Number of Respondents: 3,569,028 respondents; 3,569,028 responses.

Estimated Time per Response: .0229776 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Voluntary for the business or other for-profits or not-for-profit respondents; Mandatory for state, local or tribal government. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i) and 606 of the Communications Act of 1934, as amended.

Total Annual Burden: 82,008 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission obtained emergency OMB approval for a revision to this information collection on October 14, 2011. Emergency OMB approval is only granted until April 30, 2012. Therefore, all the regular clearance procedures need to be conducted to maintain approval beyond six months. The Commission is now seeking an extension of this information collection in order to obtain the full three year approval from OMB. There are no changes in any of the reporting and/or recordkeeping requirements. There is no change to the Commission's previous burden estimates.

The Commission established a voluntary electronic method of complying with the reporting that EAS participants must complete as part of the national EAS test. This electronic submission system will impose a lesser burden on EAS test participants because they can input electronically (via a web-based interface) the same information into a confidential database that the Commission would use to monitor and assess the test. Test participants would submit the identifying data prior to the test date. On the day of the test, EAS test participants would be able to input immediate test results. They would input the remaining data called for by our reporting rules within the 45 day period. Structuring an electronic reporting system in this fashion will allow the participants to populate the database with known information prior to the test, and thus be able to provide the Commission with actual test data, both close to real-time and within a reasonable period in a minimally burdensome fashion.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–28518 Filed 11–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens and as required by the Paperwork Reduction Act of 1995, Public Law 104–13, the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comment on this information collection should submit comments January 3, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicolas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov,* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0400.

Title: Tariff Review Plan (TRP).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 92 respondents; 92 responses.

Estimated Time per Response: 50 hours.

Frequency of Response: Annual and biennial reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. sections 201, 202, 203 and 204 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,600 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting requirements). The Commission will submit this expiring information collection to the OMB after this 60 day comment period in order to obtain the three year clearance from them. There is an adjustment to the Commission's previous burden estimates. The Commission is now reporting 92 respondents and responses with an estimated time of 4,600 burden hours, which is an increase of 1,733 hours since the last time this was submitted to the OMB in 2009 for review and approval. The increase adjustment is a result of the increase in the number of respondents/responses, an increase in the number of respondents filing separately and an increase in the resulting total annual burden hours. The total number of respondents has increased by 45; from 47 to 92, which is a result of an increase in the number of price cap carriers as well as an increase in the number of respondents filing separately.

Sections 201, 202 and 203 of the Communications Act of 1934, as amended, require common carriers to establish just and reasonable charges, practices and regulations for their interstate telecommunications services they provide.

For services that are still covered under Section 203, tariff schedules containing charges, rates, rules and regulations must be filed with the Commission. If the FCC takes no action within the notice period, then the filing becomes effective. The Commission is granted broad authority to require the submission of data showing the value of the property used to provide the services, some of which are automatically required by its rules and some of which can be required through individual requests. All filings that become effective are considered legal but only those filed pursuant to Section 204(a)(3) of the Act are deemed lawful.

For services that are detariffed, no tariffs are filed at the FCC and determination of reasonableness and any unreasonable discrimination is generally addressed through the complaint process. Incumbent local exchange carriers (ILECs) can make a voluntary tariff filing at any time, but are required to update rates annually or biennially. See 47 CFR 69.3 of the Commission's rules.

The Commission has developed standardized Tariff Review Plans (TRPs) which set forth the summary material ILECs file to support revisions to the rates in their interstate access service tariffs. The TRPs display basic data on rate development in a consistent manner, thereby facilitating review of the ILEC rate revisions by the Commission and interested parties. The TRPs have served this purpose effectively in the past years.

Incentive-based regulation (price caps) was developed by the Commission to simplify the process of determining the reasonableness of rates or rate restructures for those ILECs subject to price caps. Supporting material requirements for price cap ILECs qualifying for pricing flexibility have been eliminated. In addition, ILECs having 50,000 or fewer access lines do not have to file any supporting material unless requested to do so.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–28520 Filed 11–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens and as required by the Paperwork Reduction Act of 1995, Public Law 104–13, the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comment on this information collection should submit comments January 3, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicolas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov,* and to *Judith-B.Herman@fcc.gov mailto: Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov mailto:PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0783.

Title: Section 90.176, Coordinator Notification Requirements on Frequencies Below 512 MHz or at 764–776–794–806 MHz.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15 respondents; 3,900 responses.

Estimated Time per Response: .5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 154(i), 161, 303(g), 303(r) and 332(c)(7).

Total Annual Burden: 1,950 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting requirements and/or third party disclosure requirements). The Commission will submit this information collection after this 60 day comment period. There is no change in the Commission's previous burden estimates.

Section 90.176 requires each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and if requested, an engineering analysis. Any method can be used to ensure this compliance with the ''one business day requirement'' and must provide, at a minimum, the name of the applicant; frequency or frequencies recommended; antenna locations and heights; the effective radiated power; the type(s) of emissions; the description of the service area; and the date and time of the recommendation. If a conflict in recommendations arises, the affected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

This requirement seeks to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–28521 Filed 11–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Reviewed by the Federal Communications Commission; Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 3, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0763.

Title: ARMIS Customer Satisfaction Report.

Report Number: FCC Report 43–06.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 7 respondents; 7 responses.

Estimated Time per Response: 720 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Sections 161, 219(b) and 220 of the Communications Act of 1934, as amended.

The ARMIS reporting requirements were established by the Commission in 1987 to facilitate the timely and efficient analysis of carrier operating costs and rates of return; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy proposals. Additional ARMIS (Automated Reporting Management Information Systems) Reports were added in 1991 and 1992. Certain incumbent local exchange carriers (ILECs) were required to submit the ARMIS reports to the Commission annually on or before April 1. *See* Reporting Requirements of Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the Commission's rules), CC Docket No. 86–182, *Order,* 2 FCC Rcd 5770 (1987), *modified on recon,* 3 FCC Rcd 6375 (1988); *see* also 47 CFR Part 43, Section 43.21 of the Commission's rules.

Total Annual Burden: 5,040 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: Ordinarily questions of a sensitive nature are not asked in the ARMIS Customer Satisfaction Report. The areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, the respondent is instructed on the appropriate procedures to follow to safeguard sensitive data. Any respondent who submits information to the Commission that the respondent believes is confidential may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking an extension of this information collection in order to obtain the full three-year approval from OMB. There is no change to the annual reporting requirement. There is no change to the Commission's previous burden estimates.

The information contained in FCC Report 43–06 has helped the Commission fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data provided in the reports. Automating and organizing data submitted to the Commission facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps, and provide an improved basis for auditing and other oversight functions. Automated reporting also enhances the Commission's ability to quantify the effects of policy proposals.

The Commission has granted AT&T, Verizon, legacy Qwest, and other similarly situated carriers conditional forbearance from FCC Report 43–06. *See Petition of AT&T Inc. for Forbearance under 47 U.S.C. 160 from Enforcement of Certain of the Commission's Cost Assignment Rules,* WC Docket Nos. 07–21, 05–342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending, NASUCA* v. *FCC,* Case No. 08–1226 (D.C. Cir. filed June 23, 2008); *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering,* WC Docket Nos. 08–190, 07–139, 07–204, 07–273, 07–21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (*Verizon/Qwest Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending, NASUCA* v. *FCC,* Case No. 08–1353 (D.C. Cir. filed Nov. 4, 2008). Despite this forbearance, the Commission seeks OMB approval for the renewal of this information collection because petitions for reconsideration and review of those forbearance decisions are currently pending before the Commission and the court, respectively.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–28519 Filed 11–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–28]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—250 E Street SW., Room 1C/1CA, Washington, DC 20219.

Date: November 9, 2011.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered:

Summary Agenda

October 12, 2011 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Arizona Request for Extension of National Registry Fee Increase.
New York Request for Extension of National Registry Fee Increase.
Appraisal Complaint National Hotline.
New Hampshire Compliance Review.
South Carolina Compliance Review.

How To Attend and Observe an ASC Meeting

Email your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste. 760, Washington, DC 20005. The fax number is (202) 289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: October 27, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–28456 Filed 11–2–11; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–29]

Appraisal Subcommittee Notice of meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—250 E Street SW., Room 1C/1CA, Washington, DC 20219.

Date: November 9, 2011.

Time: Immediately following the ASC open session.

Status: Closed.

Matters to be Considered:

October 12, 2011 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: October 27, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–28463 Filed 11–2–11; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012034–004.

Title: Hamburg Sud/Maersk Line Vessel Sharing Agreement.

Parties: Hamburg-Sud and A.P. Moeller-Maersk A/S.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment revises the operational capacity of the vessels deployed under the Agreement and the space allocations of the parties accordingly. Parties requested expedited review.

Agreement No.: 201165–002.

Title: Marine Terminal Lease and Operating Agreement.

Parties: Broward County and Dole Fresh Fruit Company.

Filing Party: Candace J. McCann; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The Amendment revises the defined premises, adjusts related rentals, and clarifies payment obligations.

By Order of the Federal Maritime Commission.

Dated: October 28, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–28417 Filed 11–2–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 11–18]

Valero Refining-Texas, L.P. v. Port of Corpus Christi Authority of Nueces County, TX; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Valero Refining–Texas, L.P., hereinafter ''Complainant,'' against the Port of Corpus Christi Authority of Nueces County, Texas (PCCA) hereinafter ''Respondent''. Complainant asserts that it is a limited partnership duly organized and existing under the laws of the State of Texas, and operates a petroleum refinery at two locations along the Corpus Christi Ship Channel. Complainant alleges that Respondent is a marine terminal operator and a ''navigation district and political subdivision of the State of Texas.''

Complainant alleges that it ''has been charged wharfage and other charges that are excessive and not reasonably related to the value of services rendered to Complainant.'' Further, ''[t]hrough application of such charges, Complainant has been forced to subsidize costs associated with services provided to other users of port facilities.'' Complainant alleges that Respondent ''has violated and continues to violate the Shipping Act, 46 U.S.C. 41106(2) and (3) and 41102(c), by (a) Subjecting Valero [Complainant] to an undue or unreasonable prejudice or disadvantage; (b) granting an undue preference or advantage with respect to certain users of its facilities; and (c) failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property.'' Complainant requests the Commission issue an order ''[c]ommanding the PCCA to cease and desist from engaging in the aforesaid violations of the Shipping Act; putting in force such practices as the Commission determines to be lawful and reasonable; and * * * [c]ommanding the PCCA to pay to Valero reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorneys fees; and * * * [c]ommanding any other such relief as the Commission determines appropriate.'' The full text of the complaint can be found in the Commission's Electronic Reading Room at *http://www.fmc.gov.*

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 29, 2012 and the final decision of the Commission shall be issued by February 26, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–28467 Filed 11–2–11; 8:45 am]

BILLING CODE 6730–01–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 18, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *First NBC Bank Holding Company,* New Orleans, Louisiana; to acquire 100 percent of the voting shares of Central Progressive Bank, Lacombe, Louisiana.

Board of Governors of the Federal Reserve System, October 31, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–28495 Filed 11–2–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) 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 listed in § 225.28 of Regulation Y

(12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. 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 4 of the BHC Act.

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 November 18, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Clayton Bancorp, Inc.,* Knoxville, Tennessee; to engage in making, acquiring, brokering, or servicing loans, or other extensions of credit, pursuant to sections 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, October 31, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–28494 Filed 11–2–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 111 0097]

Healthcare Technology Holdings, Inc.; Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 28, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''IMS SDI, File No. 111 0097'' on your comment, and file your comment online at *https://www.ftcpublic.commentworks.com/ftc/imssdihealthconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Gregory Luib (202) 326–3249, FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 28, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 2, 2011. Write ''IMS SDI, File No. 111 0097'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://www.ftcpublic.commentworks.com/ftc/imssdihealthconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''IMS SDI, File No. 111 0097'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 28, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted from Healthcare Technology Holdings, Inc. (''Healthcare Technology''), subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement''), which is designed to remedy the anticompetitive effects of Healthcare Technology's proposed acquisition of SDI Health LLC (''SDI'') from SDI Health Holdings LLC (''SDI Holdings''). Under the terms of the proposed Consent Agreement, Healthcare Technology would be required, among other things, to divest SDI's promotional audits and medical audits business.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments; any comments received will also become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Pursuant to an agreement dated January 13, 2011, Healthcare Technology, through its wholly owned subsidiary, IMS Health Incorporated (''IMS''), proposes to acquire all of the membership interests in SDI (''Proposed Acquisition''). The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the U.S. markets for promotional audits and medical audits. The proposed Consent Agreement will remedy the alleged violations by replacing the competition that would otherwise be eliminated by the acquisition.

II. The Parties

Healthcare Technology is the private holding company of IMS. IMS produces and sells healthcare data and analytics to pharmaceutical, biotechnology, and other customers. IMS maintains its headquarters in Danbury, Connecticut and has operations in over 100 countries.

SDI Holdings is the private holding company of SDI, which offers many of the same healthcare data and analytics products and services as IMS, and is headquartered in Plymouth Meeting, Pennsylvania.

III. The Products and Structure of the Markets

Promotional audits provide estimates (based on data from physician panels) of pharmaceutical promotional activities for individual branded drugs in areas such as physician detailing, product sampling, and advertising. Pharmaceutical manufacturers and other customers use promotional audits to assess their ''share of voice,'' or their share of spending in various promotional categories, which helps them to determine their promotional budgets. The promotional audit market, however, does not include products that gauge physician reactions to promotional efforts or otherwise assess the effectiveness of promotional activities.

Medical audits provide estimates of disease-specific diagnoses made and therapies prescribed by physicians. The data underlying medical audits are also collected from panels of physicians. Customers use medical audits to assess, among other things, the size of therapeutic areas, which products are used to treat particular diseases, and prescribing and treatment trends.

The United States is the relevant geographic area in which to analyze the effects of the Proposed Acquisition in both the promotional audits and medical audits markets.

The $16 million market for promotional audits is highly concentrated. Only IMS, SDI, and Cegedim S.A. offer promotional audits in the United States. IMS has a 30 percent share of the market, while SDI and Cegedim have shares of 68 percent and 2 percent, respectively. The $9 million market for medical audits is also highly concentrated, with IMS accounting for 53 percent and SDI accounting for the remaining 47 percent of the market.

IV. Effects of the Acquisition

The Proposed Acquisition would eliminate actual, direct, and substantial competition between IMS and SDI in the markets for promotional audits and medical audits. By increasing IMS's share in each market, while at the same time eliminating its only significant competitor, an acquisition of SDI likely would allow IMS to unilaterally charge significantly higher prices for promotional and medical audits. The Proposed Acquisition would also likely lead to a decrease in quality for such audits, resulting in substantial anticompetitive harm to consumers in the U.S. markets for promotional and medical audits.

V. Entry

Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to prevent the anticompetitive effects of the Proposed Acquisition. Entry would not take place in a timely manner because of the significant time required to recruit panels of physicians to provide the data underlying the estimates included in promotional and medical audits. In addition, the relevant markets are relatively small and mature, limiting sales opportunities for any potential new entrant. Given the size of the investment and the time needed to enter the relevant markets, relative to the sizes of those markets, it is unlikely that an entrant could obtain sufficient sales to make the investment profitable. As a result, new entry or repositioning by other firms sufficient to ameliorate the competitive harm from the Proposed Acquisition likely would not occur.

VI. The Consent Agreement

The proposed Consent Agreement remedies the acquisition's likely anticompetitive effects in the markets for promotional and medical audits. Pursuant to the Consent Agreement, Healthcare Technology will divest all of SDI's business relating to the production or sale of promotional and medical audits. The Consent Agreement provides that Healthcare Technology must find a buyer for the SDI audits business that is acceptable to the Commission (with no minimum price), no later than three months from the date on which Healthcare Technology consummates its acquisition of SDI.

Any acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not present competitive problems. There are a number of parties interested in purchasing SDI's promotional and medical audits business, several of which appear to have the expertise, experience, and financial viability to successfully retain the current level of competition in the relevant markets.

If the Commission determines that Healthcare Technology has not provided

an acceptable buyer for SDI's promotional and medical audits business within the required time period, or that the manner of the divestiture is not acceptable, the Commission may appoint a trustee to divest the assets. The trustee would have the exclusive power and authority to accomplish the divestiture, and would divest the business for no minimum price.

The Consent Agreement also contains an Order to Hold Separate and Maintain Assets, which will serve to protect the viability, marketability, and competitiveness of the divestiture asset package until the assets are divested to a buyer approved by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–28497 Filed 11–2–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Consumer Survey of Attitudes Toward the Privacy and Security Aspects of Electronic Health Records and Electronic Health Information Exchange (New)—OMB No. 0990–NEW—Office of the National Coordinator for Health Information Technology.

Abstract: The widespread use of electronic health records and electronic health information exchange promises an array of potential benefits for individuals and the U.S. health care system through improved health care quality, safety, and efficiency. At the same time, this environment poses new challenges and opportunities for protecting health information. The proposed information collection will permit us to better understand individuals' attitudes toward the privacy and security aspects of the use of electronic health records and electronic health information exchange as well as inform policy and programmatic objectives. The Office of the National Coordinator for Health Information Technology (ONC) is proposing to conduct a nationwide survey which will use computer-assisted telephone interviews (CATI) to interview a representative sample of the general population annually for 5 years looking at the percentage of individuals who are concerned about the privacy and security of electronic health records, who report having kept any part of their medical history from their doctor due to privacy concerns, and who are concerned that an unauthorized person would see their medical information if it is sent electronically, among other key measures. ONC will assess whether these numbers increase, remain steady or decrease from 2012 (pre-implementation) to 2016 (post-implementation) in support of the ONC Coordinated Federal Health IT Strategic Plan to engage consumers and inspire confidence and trust in health IT. The data will be analyzed using statistical methods and a draft report will be prepared. ONC will hold a web seminar prior to the publication of the final report to convey the findings to the general public. A final report will be posted on *http://healthit.hhs.gov*.

ONC expects to interview 100 individuals for the pretest survey as part of the initial implementation year and interview 2,000 individuals for the main survey administered annually for 5 years. The estimated annualized respondent burden is 842 hours.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Pretest Survey	General Public	100	1	25/60	42
Main Survey	General Public	10,000	1	25/60	4167
Total		10,100	1	25/60	4209

For more information regarding an Estimated Annual Respondent Burden specifically for cognitive testing please refer to OMB Control No: 0990–0376, Communications Testing for Comprehensive Communication Campaign for HITECH Act (expiration date 07/31/2014; ICR Reference No: 201106–0990–005).

Keith Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–28457 Filed 11–2–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Temporary Certification Program; Notice of Extension

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

SUMMARY: This notice announces the decision made by the National Coordinator for Health Information Technology (the National Coordinator) to extend the Temporary Certification Program.

Authority: Section 3001(c)(5) of the Public Health Service Act (PHSA) as added by the Health Information Technology for Economic and Clinical Health (HITECH) Act.

FOR FURTHER INFORMATION CONTACT: Steve Posnack, Director, Federal Policy Division, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

SUPPLEMENTARY INFORMATION: On June 24, 2010, the Office of the National Coordinator for Health Information Technology (ONC) published a final rule (75 FR 36158) to establish a temporary certification program for health information technology. The temporary certification program would ensure that Certified EHR Technology was available for adoption and use by eligible professionals (EPs), eligible hospitals, and critical access hospitals (CAHs) for the Medicare and Medicaid EHR Incentive Programs beginning in 2011. On January 7, 2011, ONC published a final rule (76 FR 1262) to establish a permanent certification program for health information technology, which would eventually replace the temporary certification program. Under 45 CFR 170.490 and as discussed in the temporary certification program final rule (75 FR 36184), the temporary certification program will sunset on December 31, 2011, or if the permanent certification program is not fully constituted at that time, then upon a subsequent date that is determined to be appropriate by the National Coordinator. As we explained in the temporary certification program final rule (75 FR 36185), to determine whether the permanent certification program is fully constituted, the National Coordinator will consider whether there are a sufficient number of ONC–Authorized Certification Bodies (ONC–ACBs) and accredited testing laboratories to address current market demand. We refer readers to the final rule (76 FR 1262) for more information about accreditation, testing, and certification activities under the permanent certification program.

After consulting with the current ONC–Approved Accreditor (ONC–AA) for the permanent certification program (the American National Standards Institute (ANSI)) and the National Institute of Standards and Technology (NIST), which administers the National Voluntary Laboratory Accreditation Program (NVLAP) for health information technology, we do not anticipate that there will be a sufficient number of accredited testing laboratories or ONC–ACBs until summer 2012. We base this conclusion on ANSI and NVLAP's estimations of the amount of time needed to complete the accreditation of certification bodies and testing laboratories, as well as our estimation of the time period for the National Coordinator to review the applications of accredited certification bodies and subsequently authorize them as ONC–ACBs.

On this basis, the National Coordinator has determined it is necessary to extend the temporary certification program past the established sunset date of December 31, 2011. If the National Coordinator were to take no action, the temporary certification program would end on that date without a replacement program fully in place to ensure the continued availability of Certified EHR Technology for EPs and hospitals that seek to achieve meaningful use and participate in the EHR Incentive Programs. We believe that the sunset of the temporary certification program should be tied to the effective date of the final rule that we intend to issue in summer 2012, which is expected to adopt new and revised standards, implementation specifications, and certification criteria for EHR technology in support of the next stage of meaningful use under the Medicare and Medicaid EHR Incentive Programs. We believe aligning the sunset of the temporary certification program with the effective date of this forthcoming final rule would provide certainty to health care providers, EHR technology developers, and other stakeholders, while also ensuring a sufficient number of accredited testing laboratories and ONC–ACBs exist to meet market demand. Although we believe this timeline is feasible based on current expectations as discussed above, we recognize unanticipated events may make it necessary to reconsider the sunset date for the temporary certification program. We will publish another **Federal Register** notice to inform the public of any changes to our expected sunset date for the temporary certification program.

As stated in the temporary certification program final rule (75 FR 36184), when the temporary certification program sunsets, ONC–Authorized Testing and Certification Bodies (ONC–ATCBs) will be prohibited from accepting new requests to test and certify EHR technology and will be permitted up to six months after the sunset date to complete all testing and certification activities associated with requests received prior to the sunset date. If these activities are not completed within the 6-month period, the EHR technology would have to be resubmitted for testing and certification under the permanent certification program.

Dated: October 28, 2011.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2011–28492 Filed 11–2–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood Safety and Availability (ACBSA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will take place Monday, December 5, and Tuesday December 6, 2011, from 9 a.m. to 5 p.m.

ADDRESSES: National Institutes of Health Conference Room, 5635 Fishers Lane, Terrace Level, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Acting Executive Secretary, ACBSA, Office of the Assistant Secretary for Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (240) 453–8809, *FAX* (240) 453–8456, *email ACBSA@hhs.gov.*

SUPPLEMENTARY INFORMATION: The ACBSA provides advice to the Secretary, through the Assistant Secretary for Health, on a broad range of issues involving the safety and availability of blood and blood products. The agenda for the meeting includes discussion by the Committee on the current informed consent laws for blood, organ, cells, and tissues. The Committee will examine the informed consent laws and consider making recommendations about legal reform. In keeping with established mission, the ACBSA also will be asked to review and comment on previous ACBSA recommendations.

The public will have the opportunity to present their views to the Committee during a public comment session scheduled for December 6, 2011. Comments will be limited to five minutes per speaker and must be pertinent to the discussion. Pre-registration is required for participation in the public comment session. Any member of the public who would like to participate in this session is encouraged to contact the Acting Executive Secretary at his/her earliest convenience to register for time (limited to 5 minutes) and registration must be prior to close of business on December 1, 2011. If it is not possible to provide 30 copies of the material to be distributed, then individuals are requested to provide a minimum of one (1) copy of the document(s) to the Acting Executive Secretary to be distributed prior to the close of business on December 5, 2011. It is also requested that any member of the public who wishes to provide comments to the Committee utilizing electronic data projection to submit the necessary material to the Acting Executive Secretary prior to the close of business on December 1, 2011. Electronic comments must adhere to disability accessibility guidelines (Section 508 compliance).

Dated: October 27, 2011.

James J. Berger,

Acting Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 2011–28489 Filed 11–2–11; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–271]

Notice of the Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) prepare a Priority List of Hazardous Substances commonly found at facilities on the CERCLA National Priorities List (NPL). The Priority List of Hazardous Substances includes substances that have been determined to be of greatest public health concern to persons at or near NPL sites. CERCLA as amended also requires that the Priority List of Hazardous Substances be revised periodically.

This announcement provides notice that a revised Priority List of 275 Hazardous Substances has been developed and is now available for download. CERCLA as amended also requires ATSDR to prepare and to periodically revise toxicological profiles on hazardous substances included in the priority list. Thus, each priority list substance is a potential toxicological profile subject, as well as a candidate for identification of priority data needs.

In addition to the Priority List of Hazardous Substances, ATSDR has developed a Completed Exposure Pathway Site Count Report. This report lists the number of sites or events at which ATSDR is involved and wherein a substance has been found in a completed exposure pathway (CEP).

ADDRESSES: Requests for a printed copy of the 2011 Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles and Support Document, including the CEP report should be submitted to Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, ATSDR, Mail Stop F–62, 1600 Clifton Road NE., Atlanta, GA 30333.

Electronic Availability: The 2011 Priority List of Hazardous Substances and Support Document is posted on ATSDR's Web site located at *http://www.atsdr.cdc.gov/SPL.* The CEP Report is also posted at *http://www.atsdr.cdc.gov/CEP.*

FOR FURTHER INFORMATION CONTACT: Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road NE., Mail Stop F–62, Atlanta, GA 30333, telephone (800) 232–4636, ET.

This is an informational notice only; no comments are solicited at this time.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances most commonly found at facilities on the CERCLA NPL. Section 104(i)(2)(A) of CERCLA, as amended,[1] requires that ATSDR and EPA prepare a list, in order of priority, of at least 100 hazardous substances most commonly found at facilities on the NPL and which, in the agencies' sole discretion, pose the most significant potential threats to human health (see also 52 FR 12866, April 17, 1987). CERCLA section 104(i)(2)(B)[2] also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (see also 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43615, October 26, 1989; 55 FR 42067, October 17, 1990; and 56 FR 52166, October 17, 1991). CERCLA section 104(i)(2)(B) further requires ATSDR and EPA at least annually to revise the list to include any additional hazardous substances that have been determined to pose the most significant potential threat to human health.

In 1995, the agencies, recognizing the stability of this listing activity, altered the priority list publication schedule (60 FR 16478, March 30, 1995). As a result, the substance priority list is now on a 2-year publication schedule, with annual informal review and revision. However, after the publication of the 2007 substance priority list, ATSDR transitioned to a new science database. This transition caused a delay in the publication of the revised priority list. Thus, the 2011 priority list is the first publication of the list since the 2007 priority list. Each substance on the Priority List of Hazardous Substances is a potential subject of a toxicological profile prepared by ATSDR and, subsequently, a candidate for the identification of priority data needs.

The ranking of substances on the priority list is based on an algorithm

[1] 42 U.S.C. 9604(i)(2)(A).

[2] 42 U.S.C. 9604(i)(2)(B).

that consists of three criteria, weighted equally and combined to result in the total score. The three criteria are: (1) Frequency of occurrence at NPL sites; (2) toxicity; and (3) potential for human exposure. The site-specific information used to develop the priority list has been collected from ATSDR public health assessments and from site-file data packages used to develop the public health assessments. Since the development of the 2007 substance priority list, additional site specific information has been collected. The new information may include more recent NPL frequency-of-occurrence data, additional concentration data, and more information on exposure to substances at NPL sites. Using these additional data, seven substances have been replaced on the list of 275 substances since the 2007 publication; the replacement substances were previously under consideration. Changes in the order of substances appearing on the Priority List of Hazardous Substances will be reflected in program activities that rely on the list for future direction. Using the current algorithm, a total of 847 candidate substances have been analyzed and ranked. Of these candidates, the 275 substances on the priority list may in the future become the subject of toxicological profiles.

In two years ATSDR intends to publish the next revised list of hazardous substances, with an informal review and revision performed in one year. These revisions will reflect changes and improvements in data collection and availability. Additional information on the existing methodology used in the development of the Priority List of Hazardous Substances can be found in the Support Document and in the above-referenced **Federal Register** notices.

In addition to the revised priority list, ATSDR is also releasing a revised Completed Exposure Pathway Site Count Report. A completed exposure pathway (CEP) links a contaminant source to a receptor population. The CEP ranking is similar to a subcomponent of the substance priority list algorithm's potential-for-human-exposure component. The CEP ranking is based on a site frequency count and thus lists the number of sites at which a substance has been found in a CEP. This information is derived from ATSDR public health assessments and from health consultations. The CEP report therefore focuses on documented exposure, and lists hazardous substances according to exposure frequency.

The substances in the CEP report are similar to those in the Priority List of Hazardous Substances. However, some substances in the CEP report have a very low toxicity (*e.g.,* sodium) and as a result are not included in the substance priority list. Since the substance priority list uses toxicity, frequency of occurrence, and potential for human exposure to determine its priority substances, other low-toxicity substances will not appear on the list and, consequently, will not become subjects of toxicological profiles.

In addition, because CERCLA mandates the preparation of the Priority List of Hazardous Substances, that list only incorporates data from CERCLA NPL sites. The CEP report, on the other hand, uses data from all ATSDR-activity sites at which a CEP has been detected.

Dated: October 28, 2011.

Ken Rose,

Director, Office of Policy Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 2011–28477 Filed 11–2–11; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures.

OMB No.: 0970–0230.

Description: There is no longer a High Performance Bonus associated with this information collection. The Deficit Reduction Act of 2005 (Pub. L. 109–171) eliminated the funding for the High Performance Bonus (HPB), but we are still requesting that States continue to submit data necessary to calculate the work measures previously reported under the HPB.

Specifically, The TANF program was reauthorized under the Deficit Reduction Act of 2005. The statute eliminated the funding for the HPB under section 403(a)(4). Nevertheless the Department is required under section 413(d) to annually rank State performance in moving TANF recipients into private sector employment. We are, therefore, requesting that States continue to transmit monthly files of adult TANF recipients necessary to calculate the work measures performance data. To the extent States do not provide the requested information, we will extract the matching information from the TANF Data Report. This may result in calculation of the work performance measures based on sample data, which would provide us less precise information on States' performance.

The Transmission File Layouts form provides the format that States will continue to use for the quarterly electronic transmission of monthly data on TANF adult recipients. States that have separate TANF–MOE files on these programs are also requested to transmit similar files. We are not requesting any changes to the Transmission File Layouts form.

Respondents: Respondents may include any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	42	2	12	1,008

Estimated Total Annual Burden Hours: 1,008

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington,

DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* (202) 395–7285, *Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–28510 Filed 11–2–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0755]

Agency Information Collection Activities; Proposed Collection; Comment Request; Implementation of the Food and Drug Administration Amendments Act of 2007

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the requirement established by Title II of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85) that device establishments must submit registration and listing information by electronic means, using FDA Form 3673, unless the Secretary of the Department of Health and Human Services (the Secretary) grants them a waiver from the electronic submission requirement.

DATES: Submit either written or electronic comments on the collection of information by January 3, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Implementation of Sections 222, 223, and 224 of the Food and Drug Administration Amendments Act of 2007 (OMB Control Number 0910–0625)—Extension

Sections 222, 223, and 224 of FDAAA, which were in effect on October 1, 2007, require that device establishment registrations and listings under section 510 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360), including the submission of updated information, be submitted to the Secretary by electronic means, unless the Secretary grants a request for waiver of the requirement because the use of electronic means is not reasonable for the person requesting the waiver. There are approximately 24,000 establishments that are electronically registered as of September 2011.

Section 222 of FDAAA amends sections 510(b) of the FD&C Act to require domestic establishments to register annually during the period beginning October 1 and ending December 31 of each year. Section 222 of FDAAA also amends section 510(i)(1) of the FD&C Act to require foreign establishments to register immediately upon first engaging in one of the covered device activities described under the statute, and in addition, they must also register annually during the time period beginning October 1 and ending December 31 of each year. Further, section 223 of FDAAA amends section 510(j)(2) of the FD&C Act to require establishments to list their devices with FDA annually, during the time period beginning October 1 and ending December 31 of each year.

Under FDAAA, device establishment owners and operators are required to keep their registration and device listing information up-to-date using the Agency's new electronic system. Owners and operators of new device establishments must use the electronic system to create new accounts, new registration records, and new device listings. Section 224 of FDAAA amends section 510(p) of the FD&C Act by allowing an affected person to request a waiver from the requirement to register electronically when the ''use of electronic means'' is not reasonable for the person.

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

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDAAA Section of the 2007 Amendments	FDA Form No.	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
222 [3]	3673	21,254	1	21,254	0.75	15,941
222 [2]	3673	2,162	1	2,162	0.50	1,081
222 [3]	3673	8,067	1	8,067	1	8,067
222 [3]	3673	1,305	1	1,305	0.25	326
223 [3]	3673	17,750	1	17,750	1	17,750
224 (waiver request) [2]	3673	14	1	14	1	14
224 (waiver request) [3]	3673	1	1	1	2	2
Total						43,181

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One time burden.
[3] Annual recurring burden.

TABLE 2—ESTIMATED AVERAGE ANNUAL RECORDKEEPING BURDEN [1]

FDAAA Section of the 2007 Amendments	Number of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per record	Total hours
222 [2]	23,806	1	23,806	0.25	5,952
223 [2]	11,746	4	46,984	0.5	23,492
Total					29,444

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

The estimates in table 1 of this document are based on FDA's experience, data from the device registration and listing database, and our estimates of the time needed to complete the previously required forms. We estimate that the time needed to enter registration and listing information electronically using FDA Form 3673 will not differ significantly from the time needed to fill in the paper forms (FDA Forms 2891, 2891a, and 2892) that previously were used for this purpose because the information required is essentially identical.

In addition, under section 224 of FDAAA, device establishment owner/operators, for whom registering and listing by electronic means is not reasonable, may request a waiver from the Secretary. Because a device establishment's owner/operator is required to register and list, they would need only to have access to a computer, Internet, and an email address for registration and listing by electronic means, the Agency did not anticipate receipt of a large number of requests for waivers. From the October through December 2007 timeframe, FDA received fewer than 10 requests for waivers for the requirement to submit registration and listing information electronically. As data for more than 16,000 establishments were received electronically for the same period, these requests amount to less than 1 percent of the total number of establishments that have responded. The number of waiver requests received through fiscal year 2011 have remained consistently less than 1 percent.

Based on information taken from our databases, FDA estimates that there are 21,254 owner/operators who collectively register a total of 24,000 device establishments. The number of respondents listed for section 222 of FDAAA in table 1 of this document is 21,254, which corresponds to the number of owner/operators who annually register. In addition, FDA estimates that 3,504 owner/operators are initial importers who must register their establishments but who, under FDA's existing regulations, are not required to list their devices unless they initiate or develop the specifications for the devices or repackage or relabel the devices. The number of respondents included in table 1 of this document for section 223 of FDAAA is 17,750, which corresponds to the number of owner/operators who annually list one or more devices ($21,254 - 3,504 = 17,750$).

To calculate the burden estimate for waiver requests under section 224 of FDAAA, we assume as stated previously, that less than 1 percent of the 24,000 total device establishments would request waivers from FDA. This means the total number of waiver requests would probably not exceed 14 requests ($24,000 \times 0.0006$). We also estimate that the one-time burden on these establishments would be an hour of time for a mid-level manager to draft, approve, and mail a letter. In addition, FDA estimates the total number of establishments will increase by 2,162 new establishments each year. Of the 2,162 new registrants each year, we assume that less than 1 percent (*i.e.,* 1) of these will also request waivers each year. The total, therefore, is 14 waiver requests, which could increase by only one additional request each year.

Based on the number of owner operators of foreign establishments reflected in our current database, approximately 8,067 owner operators will spend an hour annually identifying the name, address, telephone and fax numbers, email address, and registration number, if any has been assigned, of any importer of the establishment's devices that is known to the foreign establishment.

Also based on the current number of owner/operators in the FDA database, we estimate that approximately 1,305 owner operators will spend .25 hours each year to identify changes in their U.S. agent's name, address, or phone number to FDA.

The burden estimate for recordkeeping requirements under section 222 of FDAAA in table 2 of this document, complies with the requirement that owners or operators keep a list of officers, directors, and partners for each establishment. Owners or operators will need to provide this information only upon request from

FDA. However, it is assumed that some effort will need to be expended for keeping such lists current.

The burden estimate for the recordkeeping requirements under section 223 of FDAAA in table 2 of this document reflect other recordkeeping requirements for devices listed with FDA and the requirement to provide these records upon request from FDA. These estimates are based on FDA experience.

Dated: October 28, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–28476 Filed 11–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0547]

Clinical Development Programs for Sedation Products; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration's (FDA), Center for Drug Evaluation and Research (CDER) is announcing a scientific workshop to solicit information on a variety of issues related to the clinical development and use of sedation products in adult and pediatric age groups. FDA intends to take into account the information provided from this workshop as we develop FDA guidance on clinical development programs for sedation products. FDA issued a notice in the **Federal Register** of November 29, 2010, inviting an interested party, or parties, to facilitate an evaluation of the critical fundamentals of the science related to sedation products and to plan and conduct one or more public meetings to bring together experts in the field, including from academia, patient organizations, and industry, to discuss these issues. FDA has since determined that it will facilitate the evaluation itself, and as a first step, is announcing this workshop.

Date and Time: The public workshop will be held on May 3, 2012, from 8:30 a.m. to 5 p.m.

Location: The workshop will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002.

Contact Person: Mary C. Gross, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, (301) 796–3519, email: *mary.gross@fda.hhs.gov;* or Diana Walker, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, (301) 796–4029, email: *Diana.Walker@fda.hhs.gov.*

Registration to Participate in Scientific Panels: If you wish to participate as part of a scientific panel, please email your request to *CDER_Sedation_Workshop@FDA.HHS.gov* by December 2, 2011. As part of your request, please describe your area of expertise and interest based on the questions identified below. If selected, a subset of panel representatives may be asked to provide formal presentations and/or participate in panel discussions.

Registration to Attend the Workshop and Requests to Participate in Open Public Hearing: If you wish to attend or testify at the open public hearing, please email your registration to *CDER_Sedation_Workshop@FDA.HHS.gov* by April 2, 2012. Those without email access may register by contacting one of the persons listed in the Contact Person section of the document. Please provide complete contact information for each attendee, including name, title, affiliation, address, email address, and telephone number. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization as well as the total number of participants based on space limitations. Registrants will receive confirmation once they have been accepted for the workshop. Onsite registration on the day of the meeting will be based on space availability. If registration reaches maximum capacity, FDA will post a notice closing meeting registration for the workshop at: *http://www.fda.gov/Drugs/NewsEvents/ucm221185.htm.*

An open public hearing will be held between 1:30 p.m. to 2:30 p.m. on May 3, 2012, during which speaker testimony will be accepted. We will try to accommodate all persons who wish to testify, however, the duration of each speaker's testimony during this open public hearing may be limited by time constraints.

Comments: Submit either electronic or written comments by July 3, 2012. 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.

If you need special accommodations due to a disability, contact Mary Gross or Diana Walker (see Contact Person) at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of November 29, 2010 (75 FR 73104), FDA indicated that it was seeking information on a variety of issues related to the clinical development and use of sedation products in adult and pediatric age groups. In the notice, FDA invited any interested party to take on the role of facilitating an evaluation of these issues and as a first step, plan or hold one or more public meetings to discuss these issues. FDA was going to take into account the information provided by these activities in the development of guidance on clinical development programs for sedation products. FDA has now determined that it will conduct the evaluation itself, and is announcing this workshop to further understand the physiology of sedation and clinical trial design issues related to the development of sedation products.

FDA will explore the following topics during this public workshop:

1. For clinical trials of sedation drug products, which surgical and diagnostic procedures would provide the most relevant efficacy and safety data, while still allowing for a reasonable level of feasibility and efficiency?

2. What patient subgroups, other than pediatric, geriatric, and patients with hepatic or renal impairment, would require specific evaluation in clinical trials involving sedation drug products?

3. What is the most appropriate primary efficacy endpoint to assess in a clinical trial of a sedation drug product?

a. Which measurement scales have been adequately studied and validated for use in assessing the endpoint measure recommended previously.

b. Is there a clinically meaningful effect size that should be considered as a minimal requirement for a determination of efficacy?

c. How do the responses to the previous questions differ, if at all, for the pediatric population, in particular, the youngest of these patients who have no or limited communication skills.

4. What secondary efficacy endpoints might be considered clinically meaningful (*e.g.,* subjective and objective assessments of memory, recall, anxiety, agitation, or delirium) if appropriately studied?

5. How should responses to rapid changes in procedural stimulation be considered in the evaluation of efficacy, *e.g.,* the time of initial incision or negotiating a colonoscope around the splenic or hepatic flexure.

6. How do the responses for each of the previous questions differ for evaluation of sedation products used in the operating room (OR), the intensive care unit (ICU), the emergency department (ED), and the gastro-intestinal (GI) suite?

FDA will post the agenda and additional workshop background material approximately 5 days before the workshop at: *http://www.fda.gov/Drugs/NewsEvents/ucm221185.htm.*

II. Transcripts

Please be advised that approximately 30 days after the public workshop, a transcript will be available. It will be accessible at *http://www.regulations.gov* and 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 Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: October 28, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–28475 Filed 11–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Lists of Designated Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice advises the public of the published lists of all geographic areas, population groups, and facilities designated as primary medical care, mental health, and dental health professional shortage areas (HPSAs) as of September 1, 2011, available on the Health Resources and Services Administration (HRSA) Web site at *http://bhpr.hrsa.gov/shortage/index.html.* HPSAs are designated or withdrawn by the Secretary of Health and Human Services (HHS) under the authority of section 332 of the Public Health Service (PHS) Act and 42 CFR part 5.

FOR FURTHER INFORMATION CONTACT: Requests for further information on the HPSA designations listed below and requests for additional designations, withdrawals, or reapplication for designation should be submitted to Andy Jordan, Office of Shortage Designation, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 594–0816), *http://bhpr.hrsa.gov/shortage/index.html.*

SUPPLEMENTARY INFORMATION:

Background

Section 332 of the PHS Act, 42 U.S.C. 254e, provides that the Secretary of HHS shall designate HPSAs based on criteria established by regulation. HPSAs are defined in section 332 to include (1) urban and rural geographic areas with shortages of health professionals, (2) population groups with such shortages, and (3) facilities with such shortages. Section 332 further requires that the Secretary annually publish a list of the designated geographic areas, population groups, and facilities. The lists of HPSAs are to be reviewed at least annually and revised as necessary. HRSA's Bureau of Health Professions (BHPr) has the responsibility for designating and updating HPSAs.

Public or private nonprofit entities are eligible to apply for assignment of National Health Service Corps (NHSC) personnel to provide primary health services in or to these HPSAs. NHSC health professionals with a service obligation may serve only in federally designated HPSAs. Entities with clinical training sites located in HPSAs are eligible to receive priority for certain training program grants administered by BHPr. Many other Federal programs also utilize HPSA designations. For example, under authorities administered by the Centers for Medicare and Medicaid Services, certain qualified providers in HPSAs are eligible for increased levels of Medicare reimbursement.

Development of the Designation and Withdrawal Lists

Criteria for designating HPSAs were published as final regulations (42 CFR part 5) in 1980. Criteria then were defined for each of seven health professional types (primary medical care, dental, psychiatric, vision care, podiatric, pharmacy, and veterinary care). The criteria for correctional facility HPSAs were revised and published on March 2, 1989, in the **Federal Register** (54 FR 8735). The criteria for psychiatric HPSAs were expanded to mental health HPSAs on January 22, 1992 (57 FR 2473). Currently funded PHS Act programs use only the primary medical care, mental health, or dental HPSA designations.

Individual requests for designation or withdrawal of a particular geographic area, population group, or a facility as a HPSA are received and reviewed continuously by BHPr. The majority of the requests come from the Primary Care Offices (PCOs) in the State Health Departments, who have access to the on-line application and review system. Requests that come from other sources are referred to the PCOs for their review and concurrence. In addition, applicants are expected to share copies of the requests with other interested parties, including the Governor, the State Primary Care Association and state professional associations for their comments and recommendations.

Annually, lists of designated HPSAs are provided to all PCOs, state medical and dental societies and others, with a request to review and update the data on which the designations are based. Emphasis is placed on updating those designations that are more than 3 years old or where significant changes relevant to the designation criteria have occurred.

Recommendations for possible additions, continuations, revisions or withdrawals from a HPSA list are reviewed by BHPr, and the review findings are provided by letter to the agency or individual requesting action or providing data, with copies to other interested organizations and individuals. These letters constitute the official notice of designation as a HPSA, rejection of recommendations for HPSA designation, revision of a HPSA designation, and/or advance notice of pending withdrawals from the HPSA list. Designations (or revisions of designations) are effective as of the date of the notification letter from BHPr. Proposed withdrawals become effective only after interested parties in the area affected have been afforded the opportunity to submit additional information to BHPr in support of its continued or revised designation. If no new data are submitted, or if BHPr review confirms the proposed withdrawal, it becomes effective upon publication in the **Federal Register** of the lists of HPSAs that do not include

the proposed withdrawals. In addition, lists of HPSAs are continuously available on the HRSA Web site, *http://bhpr.hrsa.gov/shortage/index.html,* so that interested parties can access the most accurate and timely information.

Publication and Format of Lists

Due to the volume of designations, this notice informs the public of the availability on the HRSA Web site of the published lists of designated shortage areas. The three lists of designated HPSAs are available at a link on the Office of Shortage Designation Web site at *http://bhpr.hrsa.gov/shortage/index.html.* Each list (primary medical care, mental health, and dental) includes all those geographic areas, population groups, and facilities that were designated HPSAs as of September 1, 2011. This notice incorporates the most recent annual reviews of designated HPSAs and supersedes the HPSA lists published in the **Federal Register** on February 20, 2002 (67 FR 7740). The lists include those automatic facility HPSAs that have been entered into the HPSA data base. Automatic facility HPSAs, designated as a result of the Health Care Safety Net Amendments of 2002 (Pub. L. 107–251), are not subject to the updating requirements. The lists are constantly changing based on the identification of new sites that meet the eligibility criteria or current sites that lose their eligibility and need to be removed. Each list of designated HPSAs (primary medical care, mental health, and dental) is arranged by state. Within each state, the list is presented by county. If only a portion (or portions) of a county is (are) designated, or if the county is part of a larger designated service area, or if a population group residing in the county or a facility located in the county has been designated, the name of the service area, population group, or facility involved is listed under the county name. Counties that have a whole county geographic HPSA are indicated by the ''Entire county HPSA'' notation following the county name. Further details for the HPSAs listed can be found on the HRSA Web site: *http://bhpr.hrsa.gov/shortage/index.html.*

In addition to the specific listings included in this notice, all Indian Tribes that meet the definition of such Tribes in the Indian Health Care Improvement Act of 1976, 25 U.S.C. 1603(d), are automatically designated as population groups with primary medical care and dental health professional shortages. The Health Care Safety Net Amendments of 2002 also made the following entities eligible for automatic facility HPSA designations: all federally qualified health centers (FQHCs) and rural health clinics that offer services regardless of ability to pay. These entities include: FQHCs funded under section 330 of the PHS Act, FQHC Look-Alikes, and Tribal and urban Indian clinics operating under the Indian Self-Determination and Education Act of 1975 (25 U.S.C. 450) or the Indian Health Care Improvement Act. Many, but not all, of these entities are included on this listing. Exclusion from this list does not exclude them from the list of HPSAs; all will be included in the data base as they are identified.

Future Updates of Lists of Designated HPSAs

The lists of HPSAs below consist of all those that were designated as of September 1, 2011. It should be noted that additional HPSAs may have been designated by letter since that date. The appropriate agencies and individuals have been or will be notified of these actions by letter. These newly designated HPSAs will be included in the next publication of the HPSA list.

Any designated HPSA listed on the HRSA Web site below is subject to withdrawal from designation if new information received and confirmed by HRSA indicates that the relevant data for the area involved have significantly changed since its designation. The effective date of the withdrawal will be the next publication of a notice regarding this list in the **Federal Register**.

All requests for new designations, updates, or withdrawals should be based on the relevant criteria in regulations published at 42 CFR part 5.

Electronic Access Address

The complete lists of HPSAs designated as of September 1, 2011, are available on the HRSA Web site at *http://bhpr.hrsa.gov/shortage/index.html.* Frequently updated information on HPSAs is also available at *http://datawarehouse.hrsa.gov.*

Dated: October 25, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–28318 Filed 11–1–11; 11:15 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Virology B: Overflow.

Date: November 17, 2011.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–28507 Filed 11–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Spinal Circuits and the Musculoskeletal System.

Date: November 28, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Anne Krey, Ph.D., Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–28559 Filed 11–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Cognitive Development.

Date: November 18, 2011.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Carla T. Walls, Ph.D., Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–28557 Filed 11–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Hematology and Transfusion Medical Research Career Development Program (K12).

Date: November 28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, (301) 435–0288, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Program Project: The Kidney in Hypertension.

Date: November 28, 2011.

Time: 12:30 p.m. to 5:50 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892, (301) 435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Career Enhancement Grants for Stem Cell Research.

Date: November 29, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Melissa E Nagelin, Ph.D., Scientific Review Officer, Office of Scentific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Rm. 7202, Bethesda, MD 20892, (301) 435–0297, *nagelinmh2@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–28554 Filed 11–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS/HIV Molecular Biology.

Date: December 8, 2011.

Time: 12 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS/HIV Drug Development.

Date: December 12, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–28552 Filed 11–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; (240) 276–2600 (voice), (240) 276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, require {or set} strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF): None.

Laboratories:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, (414) 328–7840/(800) 877–7016, (Formerly: Bayshore Clinical Laboratory.)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, (585) 429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, (901) 794–5770/(888) 290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, (615) 255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, (504) 361–8989/(800) 433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, (804) 378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, (501) 202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center.)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, (800) 445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, (229) 671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, (215) 674–9310.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, (662) 236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, (519) 679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, (713) 856–8288/(800) 800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ

08869, (908) 526–2400/(800) 437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, (919) 572–6900/(800) 833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, (866) 827–8042/(800) 233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, (913) 888–3927/(800) 873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, (905) 817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, (651) 636–7466/(800) 832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, (503) 413–5295/(800) 950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, (612) 725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, (661) 322–4250/(800) 350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, (888) 747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, (800) 328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory.)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, (509) 755–8991/(800) 541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, (858) 643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, (800) 729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, (610) 631–4600/(877) 642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, (800) 877–2520, (Formerly: SmithKline Beecham Clinical Laboratories.)

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, (505) 727–6300/(800) 999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, (574) 234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, (602) 438–8507/(800) 279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, (405) 272–7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, (800) 442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, (573) 882–1273.

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, (305) 593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, (301) 677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2011–28490 Filed 11–2–11; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2004–17914]

MERPAC and MMMAC Recommendations on the STCW SNPRM

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of recommendations from the Merchant Marine Personnel Advisory Committee in response to Task Statement 75, in which the Coast Guard requested review of the Supplemental Notice of Proposed Rulemaking entitled, ''Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to Domestic Endorsements'' (STCW SNPRM). The Coast Guard also announces the availability of recommendations from the Merchant Mariner Medical Advisory Committee after its review of the STCW SNPRM.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before December 5, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2004–17914 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. Rogers W. Henderson, U.S. Coast Guard, Maritime Personnel Qualifications Division; *telephone:* (202) 372–1408, *email: Rogers.W.Henderson@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, *telephone:* (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2004–17914) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notices'' and insert ''USCG–2004–17914'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the Docket: To view comments and the MERPAC and MMMAC recommendations on the STCW SNPRM, 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–2004–17914'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background

On August 1, 2011, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) in the **Federal Register** entitled, ''Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to Domestic Endorsements'' (STCW) (76 FR 45908). In response to Coast Guard Task Statement 75, the Merchant Marine Personnel Advisory Committee reviewed the SNPRM and made recommendations. The Merchant Mariner Medical Advisory Committee also reviewed the SNPRM and has issued recommendations. The recommendations from both committees are available to the public by following the directions in the ''Viewing the Docket'' section above.

This notice is issued under authority of 5 U.S.C. 552(a) and 33 CFR 1.05–1.

Dated: October 28, 2011.

Russell C. Proctor,

Captain, U.S. Coast Guard, Chief, Office of Operating & Environmental Standards.

[FR Doc. 2011–28440 Filed 11–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0619]

Mechanisms of Compliance with United States Citizenship Requirements for the Ownership of Vessels Eligible To Engage in Restricted Trades by Publicly Traded Companies

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: Under existing statutes, at least 75% of the ownership of vessels eligible to engage in the coastwise or fisheries trades must be vested in United States citizens. The Coast Guard is seeking comments and information on the various mechanisms that publicly traded companies have chosen to employ in order to assure compliance with those citizenship requirements. Although the Coast Guard may use information obtained in response to this notice to inform future rulemakings, we are not presently developing a new or revised regulation on this subject.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before February 1, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0619 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(5) For comments containing confidential information, business information or sensitive security information, please mail appropriately marked comments to Commandant (CG–0943) (RM 1417), U.S. Coast Guard, 2100 2nd Street SW., STOP 7121, Washington, DC, 20593, Attention USCG–2011–0619.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for

Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Douglas Cameron, United States Coast Guard, National Vessel Documentation Center; telephone 304–271–2506, email Douglas.G.Cameron@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We will consider all comments and material received during the comment period regardless of whether you include identifying information.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0619) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notices'' and insert ''USCG–2011–0619'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

B. Handling Confidential Information, Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) [1] to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the Coast Guard point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, the Coast Guard will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. The Coast Guard will hold them in a separate file to which the public does not have access, and place a note in the public docket that Coast Guard has received such materials from the commenter. If the Coast Guard receives a request to examine or copy this information, we will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552).

C. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0619'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

D. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Background

The United States citizenship requirements for ownership of vessels eligible to engage in the coastwise or fisheries trades are established by 46 U.S.C. 50501. Among other things, they require that 75% of the ownership interest in qualified vessel-owning entities, as evidenced by title and voting power, must be vested in United States citizens. In addition, in accordance with 46 CFR 67.31(d), where title to a vessel is held by an entity comprised, in whole or in part, of other entities, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with a coastwise or fisheries trade endorsement.[2] Thus, for publicly traded companies, as with other entities holding title to coastwise or fisheries eligible vessels, each entity whose ownership interest in the stock or equity of that company contributes to the 75% ownership requirement for that company must itself be eligible to document vessels in its own right with a coastwise or fisheries trade endorsement. Moreover, for those entities to be so eligible themselves, they must also satisfy the requirements of 46 U.S.C. 50501 and 46 CFR 67.31(d), as would, consequently, any entities whose stock or equity ownership contributes in turn to their 75% United States citizen ownership requirement.

In addition to the stock or equity ownership interest requirement discussed above, there are other requirements that entities must satisfy in order to be qualified, in their own right, to document vessels, including to document vessels with coastwise or fisheries trade endorsements. As set forth at 46 CFR 67.39(a), in the case of entities that are corporations, any such entity (1) must be incorporated under the laws of the United States or of a state; (2) its chief executive officer, by whatever title, must be a citizen of the United States; (3) the chairman of its board of directors must be a United States citizen; and (4) no more of its directors than a minority of the number necessary to constitute a quorum may be non-citizens of the United States.

The process for determining the citizenship of applicants for

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

[2] *See,* 46 CFR part 67, subpart C, ''Citizenship Requirements for Vessel Documentation.''

documentation of vessels, including for documentation with coastwise or fisheries trade endorsements, relies on self-certification. Because of that, it has long been the position of the Coast Guard that, when evidence of possible non-compliance is found, the burden is upon the applicant, or recipient of such privilege, to establish its qualifications. A clear statement of that obligation, offered in the context of publicly traded companies, was published at 58 FR 60256 (November 15, 1993) where it was stated at page 60259 as follows:

> The documentation laws are meant to be restrictive and are intended to limit the persons who are eligible to document vessels under U.S. law and acquire trading privileges. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system. Of course, any U.S. corporation that is unwilling to subject itself to the possibility of having to prove that it qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard will not be bound by any presumptions or inferences in making eligibility determinations for documentation purposes.

Against the background of this statement by the Coast Guard of the burden upon corporations to be able to prove their qualifications, as a necessary requirement of a self-certifying system for determining that U.S. citizenship standards have been met, the Coast Guard recently completed an investigation of a publicly-traded company owning vessels documented with coastwise endorsements and found that its U.S. citizenship could not be established. The report of that investigation, dated January 12, 2011, contains the Coast Guard's findings, opinions and recommendations with respect to this issue, as pertinent to the company investigated, and can be found at *http://www.uscg.mil/hq/cg5/nvdc/nvdcreport.asp* or go to the National Vessel Documentation Center home page at *http://www.uscg.mil/hq/cg5/nvdc/*, click on ''Latest News'' on the left side of the page, then click on ''Trico Investigation'' under the drop-down menu.

III. Information Requested

This notice solicits information, for the benefit of the Coast Guard but also for the mutual benefit of industry, as to the mechanisms that publicly traded companies have employed, including but not limited to those mentioned in the quoted language above, to assure compliance with United States citizenship requirements. We are also requesting information on the manner in which those mechanisms function to provide that assurance and, when called upon to do so, to offer proof of compliance. The Coast Guard will not retaliate against commenters that question or complain about citizenship requirements or any policy or action of the Coast Guard.

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 1.05–1.

Dated: October 25, 2011.

Timothy V. Skuby,

Director, National Vessel Documentation Center, U.S. Coast Guard.

[FR Doc. 2011–28447 Filed 11–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N233; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before December 5, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Laguna Vista Ranch, San Antonio, TX; PRT–180804.

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*) and Eld's deer (*Rucervus eldii*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Honolulu Zoo, Honolulu, HI; PRT 699515.

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families: Callithricidae, Canidae, Cercopithecidae (includes *Colobus*), *Felidae* (does not include jaguar, margay or ocelot), *Hominidae, Hylobatidae, Lemuridae, Rhinocerotidae, Gruidae, Psittacidae* (does not include thick-billed parrot), *Sturnidae* (does not include *Aplonis pelzelni*), *Pelomedusidae, Testudinidae.*

Species:

Asian elephant (*Elephas maximus*).

Applicant: Newport Aquarium LLC, Newport, KY; PRT- 57930A.

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for jackass penguin (*Spheniscus demersus*) and African dwarf crocodile (*Osteolaemus tetraspis*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James Hascup, Ringwood, NJ; PRT–56945A.

Applicant: Sherrie Hermann, Las Vegas, NV; PRT–57919A.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–28530 Filed 11–2–11; 8:45 am]

BILLING CODE 4310–55–P

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–28526 Filed 11–2–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N232; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; *fax* (703) 358–2280; *or email DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (*telephone*); (703) 358–2280 (*fax*); *DMAFR@fws.gov (email).*

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
50926A	Anthony Foyt	76 FR 57757; September 16, 2011	October 24, 2011.
46259A	Jefferey Spivey	76 FR 54480; September 1, 2011	October 24, 2011.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
773494	Florida Fish and Wildlife Conservation Commission	75 FR 62139; October 7, 2010	October 20, 2011.

INTERNATIONAL TRADE COMMISSION

[DN 2852]

Certain Wiper Blades; Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Wiper Blades,* DN 2852; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on Robert Bosch LLC on October 26, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wiper blades. The complaint names as respondents ADM21 Co., Ltd. of Korea; ADM21 Co. (North America) Ltd. of NJ; Alberee Products, Inc. of MD; API Korea Co., Ltd. of Korea; Cequent Consumer Products, Inc. of OH; Corea Autoparts Producing Corporation of South Korea; Danyang UPC Auto Parts Co., Ltd. of China; Fu-Gang Co., Ltd. of Taiwan; PIAA Corporation USA of OR; Pylon Manufacturing Corp. of FL; RainEater, LLC of PA; Scan Top Enterprise Co., Ltd. of Taiwan; and Winplus North America Inc. of Canada.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2852'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf.* Persons with questions regarding electronic filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: October 26, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–28487 Filed 11–2–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–720]

Certain Silicon Microphone Packages and Products Containing the Same; Determination To Rescind in Part the Limited Exclusion Order Entered on June 12, 2009

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to rescind in part the exclusion order entered on June 12, 2009 against respondent MEMS Technology Berhad (''MemsTech'') in the subject investigation to remove references to claim 1 of U.S. Patent No. 6,781,231 (''the '231 patent'') and claims 1, 2, 17, and 20 of U.S. Patent No. 7,242,089 (''the '089 patent'').

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 14, 2008, based on a complaint filed by Knowles Electronics LLC (''Knowles''). 73 FR 2277 (Jan. 14, 2008). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain silicon microphone packages and products containing the same that infringe claims 1 and 2 of the '231 patent and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of the '089 patent. The complaint named MemsTech as the respondent.

On June 12, 2009, the Commission issued a limited exclusion order (''the June 12, 2009 exclusion order'') prohibiting the unlicensed entry into the United States of MemsTech silicon microphone packages that infringe claims 1 and 2 of the '231 patent and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of the '089 patent. 74 FR 28724 (June 17, 2009). On October 13, 2009, MemsTech appealed the Commission's determination to the U.S. Court of Appeals for the Federal Circuit. On June 3, 2011, the Federal Circuit affirmed the Commission's final determination. *MEMS Technology Berhad* v. *Int'l Trade Comm'n,* No. 2010–1018, 2011 WL 2214091 (Fed. Cir. June 3, 2011) (unpublished).

On December 16, 2009, the Commission instituted *Certain Silicon Microphone Packages and Products Containing the Same,* Inv. No. 337–TA–695, in response to a different complaint filed by Knowles. 74 FR 68077 (Dec. 22, 2009). The complaint in Inv. No. 337–TA–695 alleged a violation of section 337 based on infringement of claim 1 of the '231 patent and claims 1, 2, 7, 16, 17, 18, and 20 of the '089 patent. The complaint named Analog Devices Inc. as the respondent. On November 22, 2010, the ALJ issued a final ID finding that all of the asserted patent claims are invalid under 35 U.S.C. 102 and 103, based on prior art not previously considered in the above-captioned investigation. On January 21, 2011, the Commission issued a notice determining not to review a majority of the ALJ's determinations on patent validity, which resulted in a final determination that claim 1 of the '231 patent and claims 1, 2, 7, 16, 17, 18, and 20 of the '089 patent are invalid. Knowles appealed the Commission's final determination to the Federal Circuit (Appeal No. 2011–1260), but Knowles later withdrew its appeal before the appeal was decided.

On August 9, 2011, respondent MemsTech petitioned the Commission in the above-captioned investigation to rescind all directives in the June 12, 2009 exclusion order that are based on claim 1 of the 231 patent and claims 1, 2, 17, and 20 of the '089 patent because the Commission determined those claims are invalid in Inv. No. 337–TA–695. On August 22, 2011, complainant Knowles filed an opposition to MemsTech's petition.

The Commission has determined that its invalidity determinations in Inv. No. 337–TA–695 constitute changed circumstances and justify partial rescission of the June 12, 2009 exclusion order entered in the present investigation. The Commission has determined to rescind the portions of the June 12, 2009 exclusion order that refer to claim 1 of the '231 patent and claims 1, 2, 17, and 20 of the '089 patent. All other provisions of the June 12, 2009 exclusion order remain in effect.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.76 of the Commission's Rules of Practice and Procedure (19 CFR 210.76).

Issued: October 28, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–28488 Filed 11–2–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–482–485 and 731–TA–1191–1194 (Preliminary)]

Circular Welded Carbon-Quality Steel Pipe From India, Oman, United Arab Emirates, and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–482–485 and 731–TA–1191–1194 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from circular welded carbon-quality steel pipe from India, Oman, United Arab Emirates, and Vietnam, provided for in subheadings 7306.19, 7306.30, and 7306.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of India, Oman, United Arab Emirates, and Vietnam. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. §§ 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by December 12, 2011. The Commission's views are due at Commerce within five business days thereafter, or by December 19, 2011.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* October 26, 2011.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202) 205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on October 26, 2011, by Allied Tube and Conduit, Harvey, IL; JMC Steel Group, Chicago, IL; Wheatland Tube, Sharon, PA; and United States Steel Corporation, Pittsburgh, PA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an

administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. §§ 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 16, 2011, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with the Office of the Secretary (*William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov*) on or before November 14, 2011. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 21, 2011, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments will take effect on November 7, 2011. *See* 74 FR 61937 (Oct. 6, 2011). For those materials submitted to the Commission in this proceeding on and after the effective date of these amendments please refer to 74 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 27, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–28486 Filed 11–2–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–810]

Certain Navigation Products, Components Thereof, and Related Software; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 30, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Furuno Electric Co., Ltd. of Japan and Furuno U.S.A., Inc. of Camas, Washington. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain navigation products, components thereof, and related software by reason of infringement of certain claims of U.S. Patent No. 6,084,565 (''the '565 patent''); U.S. Patent No. 7,095,367 (''the '367 patent''); U.S. Patent No. 7,089,094 (''the '094 patent''); and U.S. Patent No. 7,161,561 (''the '561 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Docket Services Division of the Office of the Secretary, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 27, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain navigation products, components thereof, and related software that infringe one or more of claims 1, 2, 11, and 16 of the '565 patent; claim 1 of the '367 patent; claim 1 of the '094 patent; and claim 8 of the '561 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which

this notice of investigation shall be served:

(a) The complainants are: Furuno Electric Co., Ltd., 9–52 Ashihara-cho, Nishinomiya City, Hyogo, 662–8580, Japan.

Furuno U.S.A., Inc., 4400 NW., Pacific Rim Boulevard, Camas, WA 98607.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Honeywell International Inc., 101 Columbia Road, Morristown, NJ 07960.

Skyforce Avionics Ltd., 5 The Old Granary, Boxgrove, Chichester, West Sussex, PO18 OES UK.

(3) For the investigation so instituted, the Honorable Charles E. Bullock, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 27, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–28485 Filed 11–2–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–030]

Government In The Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 9, 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. Nos. 701–TA–476 and 731–TA–1179 (Final)(Multilayered Wood Flooring from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before November 21, 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 27, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–28566 Filed 11–1–11; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. George's Foods, LLC, et al.; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *George's Foods, LLC, et al.,* Civil Action No. 5:11–cv–00043, which was filed in the United States District Court for the Western District of Virginia, Harrisonburg Division, on May 10, 2011, together with the response of the United States to the comment.

Copies of the comment and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the Western District of Virginia, Harrisonburg Division, 116 N. Main Street, Harrisonburg, Virginia 22802. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

In The United States District Court for the Western District of Virginia

Harrisonburg Division

United States of America, Plaintiff, v. *George's Foods, LLC, George's Family Farms, LLC.*

Civil Action No. 5:11–cv–00043.

By: Glen E. Conrad, Chief United States District Judge.

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby files the public comment concerning the proposed Final Judgment in this case and the United States' response to that comment. After careful consideration of the comment submitted, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Procedural History

On May 10, 2011, the United States filed a civil antitrust Complaint against George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, ''Defendants'' or ''George's'') alleging that George's acquisition of a Harrisonburg, Virginia chicken processing complex (''the Transaction'') from Tyson Foods, Inc. (''Tyson'') likely would substantially lessen competition for the services of broiler growers operating in and around the Shenandoah Valley area of Virginia and West Virginia, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

On June 23, 2011, the United States filed a proposed Final Judgment, which is designed to remedy the expected anticompetitive effects of the Transaction, and a Stipulation signed by the United States and the Defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15

U.S.C. 16. Pursuant to those requirements, the United States also filed its Competitive Impact Statement (''CIS'') with the Court on June 23, 2011 (Docket #45); the proposed Final Judgment and CIS were published in the **Federal Register** on June 30, 2011, see United States v. George's Foods, Inc., et. al., 76 FR 38419; and summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published in the Washington Post for seven days, beginning on June 29, 2011 and ending on July 7, 2011, and for seven days in the Harrisonburg Daily News-Record, beginning on June 29, 2011 and ending on July 8, 2011. The sixty-day period for public comment ended on September 3, 2011; one comment was received as described in Section IV below and is attached hereto.

II. The Complaint and Proposed Resolution

A. Background

On May 7, 2011, George's purchased Tyson's Harrisonburg broiler processing complex and related assets. George's and Tyson are competing chicken processors, each involved in the production, processing, and distribution of ''broilers,'' which are chickens raised for meat products. Chicken processors, such as George's and Tyson, rely on the services of farmers, called ''growers,'' to care for and raise chickens from hatch to slaughter. Growers work under production contracts with a nearby processor, which maintains ownership of the birds throughout the process.

George's and Tyson operated processing facilities about 30 miles away from each other in the Shenandoah Valley region of Virginia and West Virginia. George's operates a processing facility in Edinburg, Virginia, while Tyson operated a facility in Harrisonburg, Virginia. In addition, a third processor, Pilgrim's Pride, operates plants in Timberville, Virginia (mid-way between Edinburg and Harrisonburg) and in nearby Moorefield, West Virginia.

B. The Complaint

The United States' Complaint alleges that the Transaction would likely lessen competition for purchases of grower services in the Shenandoah Valley area. Prior to the Transaction, George's, Tyson, and Pilgrims' Pride competed against each other for grower services in the region. The transaction reduced the number of competitors in the relevant market from three to two and left George's with approximately 40% of the processing capacity in the market. The Complaint alleges that the Transaction would likely have the effect of enhancing George's incentive and ability to force growers to accept lower prices and less favorable contractual terms for grower services.

C. Proposed Final Judgment

The proposed Final Judgment requires George's within 60 days following entry of the Judgment (subject to two 30-day extensions at the discretion of the United States) to enter into contracts to implement certain capital improvements to its Shenandoah Valley area processing facilities. Under the proposed Final Judgment, George's must install at the Harrisonburg plant an individually frozen (''IF'') freezer; install a whole leg or thigh deboning line at either the Harrisonburg or Edinburg plants; and make substantial repairs to the roof of the Harrisonburg plant. The proposed Final Judgment requires that the contracts for these improvements provide for completion within 12 months. The proposed Final Judgment terminates upon motion by either the United States or the Defendants that the Defendants have satisfied the Judgment's requirements.

The proposed Final Judgment ensures that George's has the ability and incentive to increase production at its Shenandoah Valley poultry processing facilities.

Utilization of the freezer and the deboning equipment will reduce the variable costs George's incurs in its Shenandoah Valley operations. For George's to fully realize the cost savings it anticipates from the Transaction and to maximize its return on the investments required by the proposed Final Judgment,[1] George's will need to operate the Harrisonburg plant at or near capacity—something Tyson had only rarely done in the past few years. The increases in output resulting from the improvements will in turn lead to a significant increase in the total number of chickens George's must procure from area growers. This increased demand for chickens will increase demand for grower services in the Shenandoah Valley region beyond the level demanded when Tyson owned the Harrisonburg plant, which will benefit growers.

[1] The installation of the IF freezer will allow George's to produce higher margin items at both of its Shenandoah Valley facilities, and the deboning equipment will allow George's to alter the mix of products produced at these facilities. Together, these improvements will allow George's to produce products more highly valued in the marketplace and thereby earn higher margins.

III. Standard of Review Under the Tunney Act

As discussed in detail in the CIS (at pp. 13–16), the Tunney Act calls for the Court, in making its public interest determination, to consider certain factors relating to the competitive impact of the proposed Final Judgment and whether it adequately remedies the harm alleged in the complaint. See 15 U.S.C. 16(e)(1)(A) & (B) (listing factors to be considered).

This public interest inquiry is necessarily a limited one as the United States is entitled to deference in crafting its antitrust settlements.[2] See generally *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995); *Massachusetts* v. *Microsoft Corp.,* 373 F.3d 1199, 1236 (D.C. Cir. 2004) (A ''district court's 'public interest' inquiry into the merits of the consent decree is a narrow one.''); *United States* v. *SBC Commc'ns,* 489 F. Supp. 2d 1, 12–17 (D.D.C. 2007).

In making a Tunney Act determination, the relevant inquiry is ''whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlement are reasonable.'' *United States* v. *KeySpan Corp.,* 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (quoting *United States* v. *Abitibi—Consol. Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008)) (internal alterations omitted). Under this standard, the United States need not show that a settlement will perfectly remedy the alleged antitrust harm; rather, it need only provide a factual basis for concluding that the settlement is a reasonably adequate remedy for the alleged harm. SBC, 489 F. Supp. 2d at 17. The proposed Final Judgment should remedy only the anticompetitive behavior alleged in the Complaint and is not required to go beyond that. Microsoft, 56 F.3d at 1459.

With respect to the sufficiency of the proposed remedy, the United States is entitled to deference as to its views of the nature of the case, its perception of the market structure, and its predictions as to the effect of proposed remedies. See, *e.g.,* SBC, 489 F. Supp. 2d at 17. A court should not reject the United States' proposed remedies merely

[2] The purpose of Tunney Act review is not for the court to engage in commenters' desire for an ''unrestricted evaluation of what relief would best serve the public,'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (91 Cir. 1981)), or to determine the relief ''that will best serve society,'' Bechtel, 648 F.2d at 666; rather, it is to determine whether the proposed decree is within the reaches of the public interest—''even if it falls short of the remedy the court would impose on its own.'' *United States* v. *AT&T Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982).

because commenters believe that other remedies may be preferable. See KeySpan, 763 F. Supp. 2d at 637–38.

IV. Summary of Public Comment and the United States' Response

During the sixty-day public comment period, the United States received only one comment, co-authored by attorney David A. Balto and law professor Peter C. Carstensen (the ''Balto/Carstensen Comment'' or ''the Comment''). The Comment, which objected to both the scope and duration of the remedy in the proposed Final Judgment, is attached hereto. As explained in detail below, after careful review, the United States continues to believe that the proposed Final Judgment is in the public interest.

A. Summary of the Public Comment

The Balto/Carstensen Comment asserts that the proposed Final Judgment is not sufficient to remedy the harms alleged in the Complaint in that it fails to address the potential for the Defendants to degrade the terms of their contracts with growers.[3] The Comment maintains that to address adequately any harm to growers that might result from George's acquisition of the Tyson's Harrisonburg plant, the proposed Final Judgment must incorporate the following: (1) Defendants' agreement ''to refrain from degrading the contractual provisions solely by virtue of its buyer power;'' (2) an extension of the termination date of the proposed Final Judgment to ''some reasonable time period, *e.g.* five or seven years;'' (3) a provision requiring Defendants to collect complaints from growers and forward them to the Department of Justice along with a requirement that Defendants notify growers of their right to complain directly to the Department of Justice or the Department of Agriculture; and (4) a requirement that the Department of Justice reassess the competitive effects of the Transaction in three to five years and, if necessary, revise the remedy.[4]

B. Response to Comment

The remedy called for in the proposed Final Judgment is an effective one given the particular facts and circumstances of this matter. The increased demand for grower services likely to result from George's adherence to the terms of the proposed Final Judgment is likely to be sufficient to counteract any potential adverse effects (both price and nonprice) arising from the Transaction. As such, the concerns raised by the comment are misplaced. Moreover, the United States is confident that the Comment's suggestions for additional remedial measures are unnecessary to serve the public interest.

1. The Proposed Final Judgment Addresses Both Price and Nonprice Competition for Grower Services

The United States respectfully submits that the proposed Final Judgment is sufficient to remedy the harm alleged in the Complaint. Here, the principal competitive concern alleged in the Complaint is that the Transaction enhances George's ability to exercise monopsony power; *i.e.,* power over growers selling their services to George's. The economic concern regarding monoposony is that a buyer (such as George's buying services from growers) with market power will reduce purchases in order to gain a pricing advantage over sellers (*i.e.,* growers). As Professors Areeda and Hovenkamp explain, ''Unlike the competitive buyer, the monopsony buyer can reduce the purchase price by scaling back its purchases.'' IIB Philip E. Areeda, Herbert Hovenkamp, & John L. Solow, Antitrust Law 575 at 442 (3d ed. 2007).

In analyzing competitive effects resulting from a horizontal acquisition like this one, there is no substantive difference in approach applied between price and nonprice considerations,[5] and competition on nonprice contract terms is considered as important as competition on price.[6]

The remedy in the proposed Final Judgment, accordingly, is designed to ensure that output is enhanced, which will promote prices and contractual terms that are favorable for growers. As discussed above, the remedy creates a significant incentive for George's to increase production at its Shenandoah Valley plants. To accomplish this, George's will need additional chickens. This in turn will increase the overall demand for grower services in the Shenandoah Valley beyond the level demanded pre-Transaction when Tyson was operating the Harrisonburg plant at less-than-capacity levels.[7]

As set forth in the Horizontal Merger Guidelines, lowered variable cost efficiencies, such as those likely resulting from the proposed Final Judgment, will serve to ''reduce or reverse any increases in the merged firm's incentive'' to exercise market power.[8] The efficiencies in this case are specific to George's acquiring the Harrisonburg plant in that an alternative purchaser of the plant would not likely have been able to justify the equipment's high cost without the ability to spread the overhead cost across the output of two plants in the area, as George's can.

In addition, the significant cost of the improvements—which altogether could exceed George's purchase price for the Harrisonburg facility—provides George's with a substantial economic incentive to increase production that is consistent with George's public commitment to keeping the Harrisonburg plant open and fully operational.

The Comment states that to sufficiently protect growers from being harmed by the Transaction, the United States should amend the proposed Final Judgment to incorporate terms prohibiting the Defendants from degrading grower contract provisions.[9] As explained above, the proposed Final Judgment is designed to protect competition with respect to nonprice terms so there is no need for added protections. Thus, amending the proposed Final Judgment in this case as the Comment suggests would only serve to unnecessarily interject the United States or the Court into contract negotiations and disputes.[10]

[3] Comment at 2.

[4] Comment at 2–3.

[5] ''When the Agencies investigate whether [an acquisition] may lead to a substantial lessening of non-price competition, they employ an approach analogous to that used to evaluate price competition.'' U.S. Dep't of Justice and Federal Trade Comm'n, Horizontal Merger Guidelines, at 2 (2010).

[6] ''A. refusal to compete with respect to the package of services offered to customers, no less than a refusal to compete with respect to the price term of an agreement, impairs the ability of the market to advance social welfare by ensuring the provision of desired goods and services to consumers at a price approximating the marginal cost of providing them.'' Federal Trade Commission v. Indiana Federation of Dentists, 476 U.S. 447,459 (1986). See also *Catalano, Inc.* v. *Target Sales, Inc.,* 446 U.S. 643 (1980) (an agreement to eliminate a term of trade extinguishes a form of competition among sellers).

[7] The Comment agrees that the requirements imposed by the proposed Final Judgment will expand overall demand for grower services in the Shenandoah Valley. Comment at 10.

[8] Horizontal Merger Guidelines 10 (instructing that the United States can consider whether verifiable, transaction-specific efficiencies would be sufficient to reverse the transaction's potential harm to growers in the relevant market, *e.g.,* by preventing price decreases to growers in that market).

[9] Comment at 12.

[10] The Comment also asserts that the proposed Final Judgment is inadequate because the Comment believes George's extension of the grower contracts it inherited from Tyson was an ''implied remedy'' that should have been included ''as an express condition of the settlement.'' Comment at 8–9. Contrary to the Comment's assertion, George's extension of the contracts, which George's offered on its own without the knowledge or consent of the United States, was not a term—either express or implied—of the settlement between the United States and George's. The only terms of the settlement are those contained in the proposed Final Judgment.

2. The Comment's Proposals for Further Modifications to the Proposed Final Judgment Should Be Rejected

The Comment states that the proposed Final Judgment should be modified to include certain additional terms. (See supra pp. 6–7.) As a whole, the United States does not believe that additional provisions are warranted given that the proposed Final Judgment suffices to remedy the harm alleged in the Complaint. While the additional provisions set forth in the Comment may be beneficial, the purpose of Tunney Act review is not to determine what other remedies are preferable but instead to determine whether there is a factual basis for concluding that the settlement agreed upon by both the United States and the Defendants is in the public interest.[11] As discussed above, that test is satisfied.

Moreover, the specific provisions requested in the Comment are not necessary to protect the public interest. For example, the Comment states that the United States and Defendants should take certain steps in relation to the enforcement of the Packers and Stockyards Act (''PSA''), including a process for collecting grower concerns relating to their rights under the PSA.[12] There is no need, however, to include PSA-related requirements in this particular proposed Final Judgment. The Complaint in this matter was brought under Section 7 of the Clayton Act. The PSA is a separate statute dealing with marketplace practices that specifically relate to livestock, meats and poultry and is enforced primarily by the United States Department of Agriculture. The USDA has established processes to collect and handle grower complaints arising under the PSA and the Department of Justice has a similar process for individuals to raise concerns arising under the antitrust laws.[13] The Department of Justice and the USDA already work together to ensure that all concerns raised by growers brought to the attention of either agency are properly investigated and handled, regardless of whether they arise under the antitrust laws or the PSA.

The Comment also recommends that the term of the proposed Final Judgment last for ''five to seven years'' [14] and that the United States conduct a review of the effects of the Transaction and have the power to require additional remedies at the end of that period.[15] The United States does not see the need to extend the duration of the proposed Final Judgment as, once the Defendants comply with its terms, likely harm from the merger will be addressed and there will be no further need for the judgment to remain in force. Similarly, the United States is confident that the effectiveness of the proposed Final Judgment obviates the need for requiring undefined ''additional remedies.'' [16]

Underlying the additional provisions requested in the Comment is concern as to the rights of growers. The United States shares that concern, as evidenced by its bringing this action in the first place. The Defendants will remain fully subject to the antitrust laws during the pendency of the Final Judgment and after its termination. The United States will remain able to investigate any potential anticompetitive conduct in the poultry industry and will not hesitate to take appropriate action. In sum, the Comment's proposed additional provisions to the proposed Final Judgment are not needed.

V. Conclusion

The United States has determined that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comment and this response are published in the **Federal Register**. The United States does not believe that any further public hearing is required and the Tunney Act does not require a hearing as to whether a final judgment is in the public interest. *United States* v. *Lucasfilm, Inc.,* 2011 WL 2636850 at *2 (D.D.C. 2011).

Dated: October 25, 2011

Respectfully submitted,

/s/

Jill A. Ptacek, *Attorney Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530, Telephone: (202) 307–6607, Facsimile: (202) 307–2784, Email: jill.ptacek@usdoj.gov*

Certificate of Service

I certify that on October 25, 2011, I caused the Response of Plaintiff United States to Public Comment on the Proposed Final Judgment and attached exhibit to be electronically filed with the Clerk of the Court using the CM/ECF system, which will provide electronic notice to the following counsel.

William B. Poff, *Woods Rogers PLC, P.O. Box 14125, Roanoke, VA 24038–4125*

Gary V. Weeks, Bassett Law Firm, *221 North College Avenue, P.O. Box 3618, Fayetteville, AK 72702*

Michael L. Keeley,
John D. Harkrider,
Rachel J. Adcox,
Russell M. Steinthal, *Axinn, Veltrop & Harkrider LLP, 114 West 47th Street, New York, NY 10036*

Respectfully Submitted,
/s/
Jill A. Ptacek, *Attorney*, *United States Department of Justice*

In the United States District Court for the Western District of Virginia

Harrisonburg Division

United States Of America, Plaintiff, v. *George's Foods, LLC, George's Family Farms, LLC, and George's, Inc., Defendants.*

Civil Action No. 5:11–cv–00043.

By: Glen E. Conrad, Chief United States District Judge.

[11] See supra Section III; see also *United States* v. *KeySpan,* 763 F.Supp.2d 633, 642 (S.D.N.Y. 2011) (holding in Tunney Act proceeding that Government is entitled to deference in choosing to pursue settlement).

[12] Comment at 13.

[13] To contact the Department of Agriculture regarding concerns under the PSA, growers can use the following email address: ''*PSPComplaints@usda.gov*''. To report an antitrust concern to the Department of Justice, growers can contact the DOJ at *http://www.justice.gov/atr/contact/newcase.html.*

[14] The proposed Final Judgment currently provides for termination, at the request of either party, upon the Defendants completing all of the specified capital improvements; the Judgment specifies that the Defendants must have entered into contracts for the mandated improvements within 60 days of entry of the proposed Final Judgment and that all such contracts be fulfilled within six to twelve months of the contract execution date. Assuming the Defendants have contracts executed for the required investments at the time Court enters the Judgment, the Judgment could be terminable within twelve months.

[15] Comment at 3, 12 & 13.

[16] A large part of what drives litigating parties to enter into settlements as a means of resolving their disputes is the certainty afforded by knowing the cost of what ultimately will be required by each side going forward. Parties would rarely, if ever, resolve a dispute short of engaging in a full trial on the merits if the proffered settlement stated that one of the parties could unilaterally decide to change the terms of the Judgment post-entry.

Comments of David A. Balto [1] and Peter C. Carstensen [2] on the Proposed Final Judgment

I. Introduction

In a case commonly studied in a first year law course on contracts, Judge Friendly began his opinion with a simple statement: ''[t]he issue is, what is a chicken? [3] '' In this case the issue is not ''what is a chicken?'' but instead ''what is an appropriate remedy?'' For the reasons set forth below, the remedy secured by Department of Justice (''DoJ'') is inadequate and we respectfully request that this Court find the Proposed Final Judgment (''PFJ'') not to be in the public interest and correspondingly reject the PFJ as drafted.

The DoJ should be applauded for bringing this civil antitrust action against George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively ''George's'' or ''Defendants'') challenging their acquisition of a chicken processing complex from Tyson Foods, Inc. (''Tyson''). Following on the heels of an earlier DoJ enforcement action against Dean Foods Company, the instant action demonstrates the DoJ's firm commitment to restoring antitrust enforcement in critical agricultural sectors. A period of non-enforcement has led to a situation today that is analogous to the deplorable state of the U.S. agriculture industry during the late 19th century—which was one of the motivating factors behind enacting the Sherman Act in the first place.[4] Consumers are paying more, farmers are receiving less, and dominant agricultural processers, such as the Defendants, are reaping outsized profits.

The DoJ's decision to bring this enforcement action also reflects an important antitrust policy point: greater scrutiny of transactions that affect buyer power. The challenged transaction's adverse effect on consumers of poultry products was uncertain; however, the DoJ determined that the potential adverse effect on those who raise chickens (''growers'') was sufficient to prompt litigation. Although regarded as a contentious claim by some observers, this enforcement action is consistent with long-standing and well-accepted antitrust doctrine. Hence, bringing this law suit reconfirms the DoJ's commitment to challenging mergers that—primarily or exclusively—adversely affect competition on the buyer's side of the market.

The DoJ also deserves credit for bringing this enforcement action despite the small size of the transaction in terms of dollars, falling well below the current transaction size reporting threshold under the Hart-Scott-Rodino Act. The DoJ examined the specific facts and circumstances of this particular transaction and correctly concluded that the potential for adverse competitive effects on growers is substantial. The challenged transaction reduces the number of buyers for grower services in the Shenandoah Valley from three to two and represents a serious loss of opportunity for growers.

Despite these positive aspects, the remedies contained in the PFJ are ultimately incomplete because they do not adequately address all the theories of competitive harm alleged in the Complaint. Specifically, the PFJ and corresponding Competitive Impact Statement (''CIS'') fail to address the potential for the Defendants to substantially lessen competition in the market for grower services in the Shenandoah Valley vis-à-vis degrading the terms of their contracts with growers, a concern specifically raised in the Complaint.

Given the unique nature of this case and its potential long-lasting implications on antitrust enforcement in agricultural markets, it is imperative that the DoJ obtain an appropriate remedy.

For these reasons, we respectfully request that this Court find the PFJ not to be in the public interest and correspondingly reject the PFJ as drafted. We also, however, encourage the DoJ to file an amended PFJ, which incorporates the following:

- Defendants' promise to refrain from degrading the contractual provisions solely by virtue of its buyer power;
- A new termination date for the PFJ based on some reasonable time period, e.g. five or seven years;
- A provision requiring the Defendants to collect grower complaints on contract issues, report those complaints to the DoJ on a quarterly basis, and send annual notice to growers informing them that they can take complaints about contract issues to the U.S. Department of Agriculture's Grain Inspection and Packers and Stockyards Act Administration (''GIPSA''), which enforces the Packers and Stockyards Act (''PSA'') that provides protection for growers from buyer abuses, and/or contact the DoJ directly with their concerns; and
- A provision allowing for a review at some reasonable time in the future, e.g. three or five years, at which point the DoJ can reassess the competitive effect of the challenged transaction and, if warranted, revise the remedy. With the addition of these recommendations, the amended PFJ will address all the theories of competitive harm alleged in the Complaint and will fully eliminate the competitive harm arising from this transaction.

II. Background

On March 18, 2011, Tyson and George's publicly announced that George's would purchase Tyson's chicken processing complex located in Harrisonburg, Virginia.[5] The DoJ opened an investigation and issued Civil Investigative Demands (''CIDs'') on April 18, 2011.[6] Although aware of the DoJ's concerns regarding the competitive effects of the transaction, and before responding to the CIDs, Tyson and George's closed the transaction on May 7, 2011 for approximately $3.1 million for the facilities and an additional amount for equipment and current inventory.[7] The DoJ filed its complaint against George's on May 10, 2011.[8]

Tyson and George's are agricultural processors, specifically, chicken processors.[9] Contrary to the traditional depictions of farming in classic film and literature such as The Wizard of Oz or Of Mice and Men, modern agriculture operates quite differently. In the poultry

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[3] *Frigaliment Importing Co.* v. *B.N.S. Int'l Sales Corp.,* 190 F. Supp. 116 (S.D.N.Y. 1960).

[4] Philip J. Weiser, Deputy Assistant Attorney Gen., U.S. Dep't of Justice, Toward a Competition Policy Agenda for Agriculture (August 7, 2010) available at *http://www.justice.gov/atr/public/speeches/248858.htm.*

[5] Complaint at 2, *United States* v. *George's Foods, LLC,* No. 5:11–CV–00043 (W.D. Va. May 5, 2010) [hereinafter Complaint].

[6] *Id.* at 2.

[7] Competitive Impact Statement at 5–6, *United States* v. *George's Foods, LLC,* No. 5:11–CV–00043 (W.D. Va. June 23, 2011) [hereinafter CIS].

[8] Complaint, *supra* note 5.

[9] *Id.* at 2.

and many other agricultural markets, the traditional notion of ''farming''—where the farmer owns the land, raises his crop, and sells it to the market—has given way to a market structure where the middlemen, agricultural processors, dominate the market and ''farmers'' are merely contracted agents of the agricultural processors for so-called ''grower services.'' [10]

Under existing industry dynamics, chicken processors typically furnish the growers with chicks, feed, and any necessary medicines.[11] Growers typically provide the chicken houses, labor, and other miscellaneous expenses related to raising the chickens.[12] The processor handles the transportation costs which, when combined with the processors' storage constraints, means that a processor usually contracts with growers in the geographic area surrounding one of its facilities, typically within a fifty to seventy miles radius.[13] There is no cash market for chickens, so farmers who want to raise chickens on a large scale must work with a chicken processor.[14]

Given these market parameters, prior to the challenged transaction, three processors competed for grower services in the Shenandoah Valley.[15] The Defendants have a facility in Edinburg, Virginia that has the capacity to process 1,650,000 birds per week.[16] Tyson's facility in Harrisonburg, Virginia, which Defendants acquired in the challenged transaction, has a capacity of approximately 625,000 birds per week.[17] The third and largest player in the Shenandoah Valley market, who was not involved in the transaction, Pilgrim's Pride Corporation (''Pilgrim's Pride'') has a facility in Moorefield, West Virginia that can process 2,400,000 birds per week as well as a facility in Timberville, Virginia that can process 660,000 birds per week.[18]

Tyson is the largest chicken processor in the United States but it was the smallest player in the Shenandoah Valley market. And, even though Defendant's acquisition of the Tyson facility only constitutes a merger between the two smaller processors in the Shenandoah Valley in terms of capacity, the transaction increases the Herfindahl-Hirschman Index (''HHI'') by more than 700 points and results in a post-transaction market HHI in excess of 5000.[19] These HHI figures support the presumption that the transaction likely enhances Defendants' market power.[20] Additionally, the barriers to entry in the chicken processing market are significant in terms of both cost and time. Construction of a new facility requires an investment of at least $35 million and it would take at least two years before it would be operational.[21]

As detailed in the Complaint, growers benefitted from competition between the three processors ''in a variety of respects.'' [22] Competition among the processors benefitted growers in terms of better prices for their services.[23] The processers, however, also competed for grower services through their non-price contractual terms, terms that growers consider when choosing which processor to contract with.[24] The DoJ specifically noted four areas where the three processors' contracts differed: (1) Degree in which processors share various costs with growers; (2) number of flocks the processors provide the grower per year; (3) the extent to which processors require certain features in their growers' chicken houses; and (4) the degree in which processors support growers investment in upgrades to their chicken houses.[25]

The importance of these non-price contractual terms was central to the DoJ's allegations of competitive harm from the challenged transaction. That importance is reflected in the DoJ statement of the cause of action:

George's acquisition of Tyson's Harrisonburg, Virginia chicken complex will substantially lessen competition for the purchase of broker grower services in the Shenandoah Valley in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The Transaction would likely have the following effects, among others:

a. Actual and potential competition between George's and Tyson in the procurement of broiler grower services in the Shenandoah Valley will be eliminated;

b. Competition generally in the procurement of broiler grower services in the Shenandoah Valley will be substantially lessened; and

c. Suppliers of broiler growing services will receive less than competitive prices or less competitive contract terms for their services.[26]

The harm arising from the challenged transaction, therefore, was that the transaction will enhance Defendants' ability to abuse their power relative to growers in terms of both price and non-price contractual provisions. As also noted in the Complaint, in response to unfavorable contract terms or prices, ''the grower's only practicable recourse'' is switching to another processor.[27] The reduction of the number of competitors in this market from three to two will reduce the practicability of that option, especially since the other player, Pilgrim's Pride, does not have available capacity to take on a significant number of growers who may want to switch away from the Defendants.[28]

The acquisition was already consummated at the time the DoJ initiated the suit; a fact that may have created a serious obstacle in terms of remedy. Moreover, the acquired facility apparently needs significant renovation and its total size is constrained because of its location. We are free to speculate that, before entering into the proposed settlement agreement allowing Defendants to keep the acquired facility, the DoJ made a substantial effort to find an alternate buyer for the acquired facility. Perhaps there was no viable alternative buyer.

In an attempt to mitigate the competitive concerns in light of these unique obstacles, the PFJ is premised on three structural remedies: (1) Defendants must purchase and install a freezer at the Harrisonburg, Virginia facility; (2) Defendants must purchase and install a deboning line at either the Harrisonburg, Virginia facility or Edinburg, Virginia facility; and (3) Defendants must repair the roof at the Harrisonburg, Virginia facility. These provisions hopefully will deter the defendants from exercising their power, to decrease output by committing them to expanding capacity and improving their overall operations. The DoJ contends that these remedies will expand the demand for grower services in the Shenandoah Valley.

What the PFJ fails to address are the anticompetitive concerns given the Defendants' enhanced ability to degrade contract terms it offers to growers in the Shenandoah Valley. For this reason, which is the focus of the remainder of these comments, the PFJ is inadequate and should be rejected as not in the public interest.

[10] See generally, Richard J. Sexton, *Industrialization and Consolidation in the U.S. Food Sector: Implications for Competition and Welfare,* 82(5) AMER. J. AGR. ECON. 1087 (2000) (documenting the increased market concentration in the processing segment of agriculture markets).

[11] CIS, *supra* note 7, at 3.

[12] *Id.*

[13] *Id.;* Complaint, *supra* note 5, at 8.

[14] CIS, *supra* note 7, at 3..

[15] Complaint, *supra* note 5, at 9.

[16] CIS, *supra* note 7, at 4.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 9.

[20] U.S. Dep't of Justice, HORIZONTAL MERGER GUIDELINES 5.3 (2010).

[21] Complaint, *supra* note 5, at 12.

[22] *Id* at 10.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 10–11.

[26] *Id.* at 13 (emphasis added).

[27] Complaint, *supra* note 5, at 11.

[28] *Id.* at 4.

III. Applicable Standards

Pursuant to the Antitrust Procedures and Penalties Act (''APPA''), the standard for judicial review of PFJs in antitrust cases is whether or not entry of the PFJ ''is in the public interest.'' 15 U.S.C. 16(e)(1). When conducting its public interest determination, the court ''may not simply rubberstamp the government's proposal, but rather it must engage in an independent determination of whether a proposed settlement is in the public interest.'' *United States* v. *AT&T, Inc.,* 541 F. Supp. 2d 2, 6 (D.D.C. 2008) (internal quotations marks and citations omitted).

In making the public interest determination, the APPA requires the court to consider the following:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). The court's review of a PJF is therefore limited, as the court may only inquire ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the Final Judgment are clear and manageable.'' *United States* v. *InBev N.V./S.A.,* 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009).

A court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)). As explained by the Ninth Circuit in *Bechtel,* in determining whether a PFJ is in the public interest, ''[t]he court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' '' *Bechtel,* 648 F.2d at 666 (citations omitted). See also *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp 2d 1, 17 (D.D.C. 2007) (''The government need not prove that the settlements will perfectly remedy the alleged antitrust harms, it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'').

A court may only review the decree itself in relation to the complaint and cannot ''effectively redraft the complaint.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1459 (DC Cir. 1995). Courts also should not ''look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp 2d at 15.

Even under these extremely narrow boundaries of judicial review, as further explained below, the PFJ in this case fails to satisfy the public interest requirement. A court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree.'' BNS, 858 F.2d at 464. Therefore, this Court, after finding that the PFJ fails to satisfy the public interest requirement, should reject the PFJ as drafted.

IV. The Proposed Remedies Do Not Adequately Redress the Competitive Harms Alleged in the Complaint

The PFJ in this case fails to satisfy the public interest requirement, even under the narrow confines for judicial review of PFJs in antitrust cases, because it omits any remedy of a key competitive harm alleged in the Complaint: the competitiveness of non-price contractual terms in agreements between growers and processors.

In its statement of the cause of action, the DoJ specifically alleges that the transaction enhances the Defendants' ability to impose ''less competitive contract terms for [grower] services.'' [29] There are repeated references throughout the Complaint to this particular manifestation of the adverse competitive impact of the challenged transaction.[30]

This concern is well-founded. Extensive past experience shows that, when competition is weak or non-existent in the market for buyers of growers' services, processors have frequently changed the terms of their contracts to exploit the growers and appropriate their investment. The facilities for raising chickens represent a significant, long-term capital investment by a grower and these facilities have only one practical economic use.[31] A grower who makes a long term commitment to raising chickens, usually finances this with long term debt, hence in a non-competitive environment, buyers have substantial opportunity and ability to impose new, exploitive terms on growers after they have made that initial commitment. These tactics were highlighted at several of the recent Workshops on Agricultural Competition Issues jointly sponsored by the Department of Justice and the Department of Agriculture.[32]

The PFJ contains no remedy designed to address the impact that the challenged transaction will have on the terms of grower service contracts. And, in stark contrast to the language in the Complaint, the CIS contains no discussion of the impact that the challenged transaction will have on the non-price terms of grower service contracts. Instead, there is merely a passing reference to this issue in a footnote in the CIS noting only that Defendants have assumed the existing written agreements that Tyson had with growers as of the date of the transaction and has offered to extend those contracts thru 2018.[33] Somewhat paradoxically, the CIS explicitly reaffirms this particular potential adverse competitive impact of the merger, re-acknowledging that most growers will not abandon their initial investment in response ''to small decreases in the prices (or degradations of other contract terms) they receive for their services.'' [34]

The DoJ's recognition of the likely harm that the merger will lead to reduced competition vis-à-vis the non-price contractual terms demonstrates

[29] Complaint, *supra* note 5, at 13.

[30] *Id.* at 4, 9–11.

[31] *Id.* at 6–7.

[32] In August 2009, the Attorney General Eric Holder and Agriculture Secretary Tom Vilsack announced a series of joint public workshops to explore competition issues affecting the agriculture industry, and were intended to specifically address buyer power and vertical integration. Press Release, U.S. Dep't of Justice, Justice Department and USDA to Hold Public Workshops to Explore Competition Issues in the Agriculture Industry (Aug. 5, 2009), available at *http://www.justice.gov/atr/public/press_releases/2009/248797.htm.* The series of five workshops were held in Iowa, Alabama, Wisconsin, Colorado and Washington, DC and there were over 3,500 participants through the first four workshops. Christine Varney, Assistant Attorney General, U.S. Dep't of Justice, Joint DOJ and USDA Agriculture Workshops: Concluding Remarks (Dec. 8, 2010), available at *http://www.justice.gov/atr/public//264911.pdf.* The workshop held in Alabama was dedicated to competitive issues in the poultry market. Transcript of Record of Poultry Workshop (May 21, 2010), available at *http://www.justice.gov/atr//workshops/ag2010/alabama-agworkshop-transcript.pdf.*

[33] CIS, *supra* note 7, at 9 n.5.

[34] *Id.* at 5–6 (emphasis added).

the inadequacy of the PFJ. The inadequacy is three-fold.

First, as the footnote in the CIS suggests, presumably the DoJ conducted some inquiry to this particular issue. We believe that the Defendants' extension of the contracts inherited from Tyson was an implied condition of the proposed settlement. If this was in fact the case, then the PFJ should have included that as an express condition of the settlement. Implied remedies are simply inadequate and the enforceability of an implied remedy is unclear. Implied remedies should be disfavored because they do not comport with the APPA's requirement that the CIS recite ''an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief.'' 15 U.S.C. 16(b)(3).

Second, there is no discussion of the nature of the Defendants' extension of the Tyson agreements, nor has this Court reviewed those revised agreements. We may speculate that the DoJ in fact reviewed the revised contract terms in light of what it had learned at the Workshops to ensure that they conformed to the PSA and the corresponding administrative rules promulgated thereunder which protect growers from exploitation.[35] Nevertheless, the DoJ provides no information on either the price or the non-price contractual provisions of the purported addendum extending the contracts thru 2018. Therefore, the public and this Court has no information upon which to determine whether or not Defendants have already exercised its enhanced market power by imposing unfavorable terms on Tyson's growers.

Third, and perhaps most disconcerting, the PFJ ignores the other side of the coin: the relationships that George's has with its existing growers. This failure even to consider the impact the transaction would have on the contracts Defendants have with their existing growers perhaps best illustrates the omission of any significant analysis of the non-price contractual terms of grower service contracts.

The contracts that the Defendants inherited from Tyson are only part of the competitive concern raised by the Complaint. Before the transaction, Tyson growers could switch to the Defendants and vice-versa in response to unfavorable contractual provisions. At the time of the transaction, Tyson had contracts with approximately 120 growers in the Shenandoah Valley, whereas George's had contracts with approximately 190 growers.[36] After the merger, and in light of the Pilgrim Pride's limited available capacity, Tyson's and George's growers lose the ''only practicable recourse in the face of unfavorable contract terms.'' [37]

Assuming arguendo that the Defendants assumed and renewed the 120 or so existing Tyson contracts at their existing terms, nothing in the PFJ or the CIS addresses Defendants' potential to abuse their increased buyer power by manipulating the non-price contractual terms governing the relationship between Defendants and its 190 or so other growers. Therefore, even if the Defendants renewed the Tyson contracts as an undisclosed condition of the PFJ, that remedy alone would be inadequate because it wholly ignores the impact that the challenged transaction will have on the 190 growers whose services for the Defendants predate the transaction. Nothing in the PFJ remedies this concern and there is no meaningful discussion of this potential harm in the CIS, even though it was heavily emphasized in the Complaint.

The DoJ's response to these three criticisms will likely be that, although not explicitly discussed in the PFJ or CIS, the proposed remedies impliedly and adequately redress the potential competitive harm of Defendants abusing their increased buyer power by degrading the non-price terms of their agreements with growers. This claim, however, is a non-sequitur.

The purported goal of the structural remedies in the PFJ is to give Defendants ''the incentive and ability to increase local poultry production, thereby increasing the demand for grower services.'' [38] As we stated above, we agree with the DoJ's assessment that the investments will increase Defendants' demand for grower services. We do not, however, agree that increased demand will preclude Defendants from simultaneously degrading the non-price contractual terms of its contracts with existing growers or even with new growers added in response to the expanded capacity of Defendants after they have made their initial irrevocable investment.

A rational economic actor seeks to reduce the total compensation it pays suppliers. The DoJ specifically alleged that the non-price terms in grower contracts factor into the total compensation processors pay to growers.[39] The PFJ is inadequate because, to truly remedy the competitive harms alleged in the Complaint, the PFJ should also include a conduct remedy that prohibits Defendants from imposing unfavorable terms on growers.

Perhaps the DoJ has in mind that there is a task force that combines the GIPSA staff enforcing the PSA at the Department of Agriculture with lawyers from both the Antitrust and Civil Divisions of the DoJ whose mission is to enhance enforcement of the PSA in order to address problems of contract manipulation and exploitation. Moreover, the DoJ might have concluded that its ability under the PFJ to review contracts of the Defendants provides a means by which it could in fact monitor the Defendants' conduct and ensure that all growers working for Defendants would be protected from any violations of their rights under the PSA.

Explicitly including a requirement in the PFJ that the Defendants adhere to the PSA would have clarified the mechanism by which the DoJ expected to protect growers from abuse in the future. And, doing so would have provided greater assurance that the Defendants would voluntarily comply with those rules because such a violation would constitute contempt under the PFJ. The DoJ, however, might prefer to see such enforcement done through the PSA process. But, if that is its preference, it should have been stated in both the PFJ and the CIS. Those statements would have made explicit how growers could trigger DoRGIPSA review of any questionable contractual actions by the Defendants.[40]

[35] 7 U.S.C. 181–229c (2006); 9 CFR 201.1–.200 (2011).

[36] *Id.* at 4.

[37] Complaint, *supra* note 5, at 11.

[38] Press Release, U.S. Dep't of Justice, Justice Department Reaches Settlement with George's Inc. (June 23, 2011), available at *http://www.justice.goviatr/public/press_releases/2011/272510.htm.*

[39] Complaint, *supra* note 5, at 10.

[40] A number of federal circuit courts of appeals, contrary to the views of the Secretary of Agriculture and the Civil Division of the DoJ (as an amicus), have held that there can be no violation of the PSA or the regulations promulgated thereunder unless there is an adverse effect on consumers. See, *e.g., Terry* v. *Tyson,* 604 F.3d 272 (6th Cir. 2010) cert. denied, 131 S. Ct. 1044 (2011). The Secretary has no authority to directly enforce the PSA and corresponding regulations with respect to poultry markets. Enforcement requires either a private law suit or an action brought by the Civil Division on behalf of the Secretary. To date, we are unaware of any poultry case that the Civil Division has initiated on behalf of the Secretary and any such case would have to overcome some daunting precedents to protect growers for a buyer such as the Defendants.

Continued

The incongruities between the competitive harms alleged in the Complaint and the remedies contained in the PFJ present sufficient grounds for this Court to find the PFJ not to be in the public interest. As this Court is limited to accepting or rejecting the PFJ as drafted, we respectfully request this Court reject the PFJ.

Revising the Remedies

To reiterate our earlier statement, we strongly support the DoJ's decision to bring an enforcement action for this transaction. We also applaud the DoJ for developing innovative structural remedies in response to a unique situation where the traditional structural remedy, divestiture, was apparently not feasible. These innovative structural remedies, however, only redress some of the potential competitive concerns raised in the Complaint and therefore are incomplete. Correspondingly, the Court should reject the PFJ as drafted as not in the public interest.

The DoJ should, however, fashion an amended PFJ that adequately remedies the competitive concerns set forth in the Complaint. In doing so, we offer one general and several specific recommendations. Generally, we would respectfully request that the DoJ look to the standards set forth in its own Guide to Merger Remedies (''GMR''). In that light, we also give several specific provisions that we believe will bring the amended PFJ in line with the GMR as well as the requirements of the APPA.

A. Guide to Merger Remedies

Although concededly not as binding as the standards from the APPA are on courts, the DoJ also has principles by which they craft merger remedies. These principles are set forth in the GMR, which was recently updated in June of this year, and state that ''[t]here should be a close, logical nexus between the proposed remedy and the alleged violation—and the remedy should fit the violation and flow from the theory or theories of competitive harm.'' [41]

These principles further explain why the proposed PFJ is inadequate. The competitive harm alleged in the Complaint, specifically Defendants' enhanced ability to impose unfavorable, non-price contractual provisions on growers, is not addressed by the proposed remedies set forth in the PFJ, and therefore fails to demonstrate a ''close, logical nexus'' with the alleged violation. Additionally, to approve a remedy that fails to comport with this basic requirement would create uncertainty regarding the GMR, which undermines the express purpose of ''provid[ing] transparency into the division's approach to merger remedies for the business community, the antitrust bar, and the broader public.'' [42]

In revising the PFJ, we ask that the DoJ follow the principles articulated in the GMR and craft a set of remedies that adequately addresses the alleged competitive harms set forth in the Complaint.

B. Our Recommendations for the Amended PFJ

We propose that the DoJ make the following changes to the PFJ to adequately address the alleged competitive concerns of the challenged transaction. We also emphasize that these changes are supplements to, not replacements of, the structural remedies contained in the initial PFJ.

First, the amended PFJ should include the Defendants' agreement to refrain from degrading the contractual provisions solely by virtue of its buyer power. While Defendants can retain the right to reduce or eliminate provisions that are beneficial to growers, this should only occur if there is mutuality, exhibited by either an increased benefit to growers under some other provision or a reduction in the obligations of the growers.

To enforce this first proposed amendment to the PFJ, the DoJ should be permitted to seek to court enforcement; but, the amended PFJ should also include a provision allowing, at the DoJ's discretion, an aggrieved grower to pursue a commercial arbitration procedure as established under the amended PFJ. The DoJ already has a template for such a condition because a similar remedy was included in the PFJ in the Comcast/NBCU merger.[43]

Second, to monitor the Defendants' compliance with the first recommended change to the PFJ, the termination date of the amended PFJ should be changed from the time that the Defendants have completed the required investments to some reasonable time period, e.g. five or seven years. We acknowledge that in the longer term, these issues should primarily be the concern of the USDA and the Civil Division given their responsibility of enforcing the PSA and corresponding GIPSA regulations. However, as part of the antitrust remedy to avoid undue risks of harm to growers resulting directly from an acquisition that would otherwise have violated antitrust law, the Antitrust Division ought to retain authority to ensure that anticompetitive conduct does not occur.

Third, the amended PFJ should include a provision requiring the Defendants to collect any complaints from growers regarding the terms of contracts for grower services and report those complaints to the DoJ on a quarterly basis for the duration of the PFJ. The DoJ already has a template for such a provision, as they included such a provision in the Comcast/NBCU deal.[44] In addition, the PFJ should require the Defendants annually to notify all growers of their rights under the PSA as well as their right to complain directly to the Department of Agriculture or the DoJ if they believe that they are subject to an abusive change in their contractual obligations.

Fourth, the amended PFJ should establish a reasonable time in the future, e.g. three or five years from entry of the PFJ, at which point the DoJ will reassess the competitive effects that the challenged transaction has had on competition for grower services in the Shenandoah Valley. This provision should also expressly provide the DoJ with the option to require divestiture or other remedies it deems reasonable based on the results of that reassessment.

VI. Conclusion

In this matter, the DoJ has adequately answered the question: ''what is the competitive harm from this transaction?'' What the DoJ has failed to do is provide an answer to the question: ''what is the adequate remedy?''

Under the standards of judicial review under the APPA, this Court should find that the PFJ is not in the public interest, primarily because the remedies contained in the PFJ do not adequately address the competitive harms detailed in the Complaint. Accordingly, we respectfully request that this Court reject the PFJ as drafted.

Hence, reliance on the Civil Division acting on behalf of the Secretary to protect growers is a process that would be novel and so would merit explicit acknowledgement so that all interested parties could be aware of this new enforcement strategy.

[41] U.S. Dep't of Justice, ANTITRUST DIVISION POLICY GUIDE TO MERGER REMEDIES at 4 (June 2011), available at *http://www.justice.gov/atr/public/guidelines/272350.pdf.*

[42] Press Release, U.S. Dep't of Justice, Antitrust Division Issues Updated Merger Remedies Guide (June 17, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/272365.htm.*

[43] Proposed Final Judgment at 24–30, *United States* v. *Comcast Corp.,* No. 1:11–CV–00106 (D.D.C. June 29, 2011).

[44] Proposed Final Judgment at 17, *United States* v. *Comcast Corp.,* No. 1:11–CV–00106 (D.D.C. June 29, 2011) (''Comcast and NBCU shall furnish to the Department of Justice and the Plaintiff States quarterly electronic copies of any communication * * * containing allegations of Defendants' noncompliance with any provision in this Final Judgment''), available at *http://www.justice.gov/atr/cases/f272600/272610.pdf.*

We have outlined the ways in which the DoJ can modify the PFJ to adequately address the competitive harms and thereby comport with the public interest standard. In response to the rejection of its initial PJF, the DoJ and the Defendants should submit a revised PFJ that comports with the foregoing recommendations.

Respectfully submitted,

David A. Balto,

Law Offices of David Balto, 1350 I Street NW., Suite 850, Washington, DC 20005

Peter C. Carstensen,

George H. Young-Bascom Professor of Law University of Wisconsin Law School, 975 Bascom Mall, Madison, WI 53706

[FR Doc. 2011–28249 Filed 11–2–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Impact Evaluation of the YouthBuild Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored proposal for a new information collection titled, ''Impact Evaluation of the YouthBuild Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before December 5, 2011.

ADDRESSES: A copy of this Information Collection Request (ICR) with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks OMB approval under the PRA for an initial information collection in support of an impact evaluation of the YouthBuild Program. Specifically, the DOL seeks to conduct a census survey of all 2011 DOL funded YouthBuild grantees and Corporation for National and Community Service funded grantees that do not also receive DOL funding. The impact evaluation of the YouthBuild Program is a seven-year experimental design impact evaluation. YouthBuild is a youth and community development program that addresses several core issues facing low-income communities: education, employment, crime prevention, leadership development, and housing. The program primarily serves high school dropouts and focuses on helping them attain a high school diploma or general educational development certificate and teaching them construction skills geared toward career placement. The evaluation will measure core program outcomes including educational attainment, postsecondary planning, employment, earnings, delinquency, and involvement with the criminal justice system, and youth social and emotional development. The evaluation represents an important opportunity for the DOL to add to the growing body of knowledge about the impacts of second-chance programs for youth who have dropped out of high school, including outcomes related to educational attainment, postsecondary planning, employment, earnings, delinquency, and involvement with the criminal justice system, and youth social and emotional development.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on May 11, 2011 (76 FR 27363).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention ICR Reference Number 201108–1205–005. The OMB is particularly interested in comments that:

- 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 agency's 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.

Agency: Employment and Training Administration (ETA).

Title of Collection: Impact Evaluation of the YouthBuild Program.

ICR Reference Number: 201108–1205–005.

Affected Public: Private Sector—Not for-profit institutions.

Total Estimated Number of Respondents: 114.

Total Estimated Number of Responses: 114.

Total Estimated Annual Burden Hours: 57.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 27, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–28470 Filed 11–2–11; 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 October 17, 2011 through October 21, 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 of 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 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–80,392; Flextronics Integrated Network Solutions, Memphis, TN: August 24, 2010.

TA–W–80,455; LA Darling Company, LLC, Corning, AR: September 19, 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–80,359; Perfect Fit Industries, LLC, Monroe, NC: August 9, 2010,

TA–W–80,472; Tiger Drylac USA, Inc., Reading, PA: September 26, 2010,

TA–W–80,473; Reading Powder Coatings, Inc., Reading, PA: September 26, 2010,

TA–W–80,484; Cummins Filtration, Lake Mills, IA: October 16, 2011.

I hereby certify that the aforementioned determinations were issued during the period of October 17, 2011 through October 21, 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 *www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: October 26, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Adjustment Assistance.

[FR Doc. 2011–28443 Filed 11–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,151; TA–W–75,151A]

Navistar Truck Development and Technology Center; a Subsidiary of Navistar International Corporation Truck Division, 2911 Meyer Road, Including Leased Workers From Populous Group, Livernois Vehicle Development, ASG Renaissance and Alpha Personnel, Inc. Fort Wayne, IN; Navistar Truck Reliability Center, a Subsidiary of Navistar International Corporation, Truck Division, 3033 Wayne Trace, Including Leased Workers From Populous Group, Livernois Vehicle Development, ASG Renaissance, and Alpha Personnel, Inc. Fort Wayne, IN; Notice of Revised Determination on Reconsideration

On September 15, 2011, the Department of Labor (Department)

issued a Notice of Affirmative Determination Regarding Application for Reconsideration to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Navistar International Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division, 2911 Meyer Road, Fort Wayne, Indiana (TA–W–75,151). The Department's Notice of Affirmative Determination was published in the **Federal Register** on September 23, 2011 (76 FR 59166). Workers are engaged in activities related to the supply of truck body engineering and design services.

During the reconsideration investigation, the Department received new information from Navistar International Corporation (Navistar).

The reconsideration investigation revealed that the workers of Navistar Truck Reliability Center, a Subsidiary of Navistar International Corporation, Truck Division, 3033 Wayne Trace, Fort Wayne, Indiana (TA–W–75,151A) supply support services to the Meyer Road location of Navistar, and that each location utilize leased workers from Populous Group, Livernois Vehicle Development, ASG Renaissance, and Alpha Rae Personnel, Inc.

Therefore, the Department determines that the subject worker group consists of workers and former workers of Navistar International Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division, 2911 Meyer Road, including leased workers from Populous Group, Livernois Vehicle Development, ASG Renaissance, and Alpha Rae Personnel, Inc., Fort Wayne, Indiana (Navistar, Meyer Road TA–W–75,151) and Navistar Truck Reliability Center, a Subsidiary of Navistar International Corporation, Truck Division, 3033 Wayne Trace, including leased workers from Populous Group, Livernois Vehicle Development, ASG Renaissance, and Alpha Rae Personnel, Inc., Fort Wayne, Indiana (Navistar, Wayne Trace 75,151A), who are/were engaged in employment related to the supply of truck body engineering and design services and/or support services.

Based on new information obtained during the reconsideration investigation, the Department determines that workers and former workers of Navistar, Meyer Road TA–W–75,151 and Navistar, Wayne Trace 75,151A have met the worker group certification criteria under Section 222(a) of the Trade Act, 19 U.S.C. 2272(a).

Criterion I has been met because a significant number or proportion of workers at Navistar, Meyer Road TA–W–75,151 and Navistar, Wayne Trace 75,151A have become totally or partially separated, or are threatened with such separation.

Criterion II has been met because there has been a shift in a portion of the supply of services by Navistar to a foreign country.

Criterion III has been met because the shift in services contributed importantly to the workers' separation, or threat of separation, at Navistar, Meyer Road TA–W–75,151 and Navistar, Wayne Trace 75,151A.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers and former workers of Navistar, Meyer Road TA–W–75,151 and Navistar, Wayne Trace 75,151A, who are engaged in employment related to the supply of truck body engineering and design services or support services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Navistar International Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division, 2911 Meyer Road, including leased workers from Populous Group, Livernois Vehicle Development, ASG Renaissance, and Alpha Rae Personnel, Inc., Fort Wayne, Indiana (TA–W–75,151) and Navistar Truck Reliability Center, a Subsidiary of Navistar International Corporation, Truck Division, 3033 Wayne Trace, including leased workers from Populous Group, Livernois Vehicle Development, ASG Renaissance, and Alpha Rae Personnel, Inc., Fort Wayne, Indiana (TA–W–75,151A), who became totally or partially separated from employment on or after January 30, 2010, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 20th day of October, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–28444 Filed 11–2–11; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2012

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2012 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2012.

DATES: All comments and recommendations must be received on or before the close of business on December 5, 2011.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation; 3333 K Street NW., Third Floor, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295–1545, or *haleyr@lsc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on March 30, 2011 (76 FR 17711), and Grant Renewal applications due beginning June 6, 2011, LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

Service area	Applicant name	Estimated annualized funding amount
Alabama		
AL–4	Legal Services Alabama, Inc	7,090,822
MAL	Texas RioGrande Legal Aid, Inc	36,315
Alaska		
AK–1	Alaska Legal Services Corporation	820,885

Service area	Applicant name	Estimated annualized funding amount
NAK–1	Alaska Legal Services Corporation	598,212
American Samoa		
AS–1		354,725
Arizona		
AZ–2	DNA–Peoples Legal Services, Inc	595,687
AZ–3	Community Legal Services, Inc	4,299,659
AZ–5	Southern Arizona Legal Aid, Inc	2,073,760
MAZ	Community Legal Services, Inc	163,871
NAZ–5	DNA–Peoples Legal Services, Inc	2,886,399
NAZ–6	Southern Arizona Legal Aid, Inc	705,063
Arkansas		
MAR	Texas RioGrande Legal Aid, Inc	87,239
AR–6	Legal Aid of Arkansas, Inc	1,651,500
AR–7	Center for Arkansas Legal Services	2,465,248
California		
MCA	California Rural Legal Assistance, Inc	2,913,644
CA–1	California Indian Legal Services, Inc	37,499
CA–12	Inland Counties Legal Services, Inc	4,628,830
CA–14	Legal Aid Society of San Diego, Inc	3,236,873
CA–19	Legal Aid Society of Orange County, Inc	4,521,039
CA–2	Greater Bakersfield Legal Assistance, Inc	1,041,775
CA–26	Central California Legal Services	3,259,303
CA–27	Legal Services of Northern California, Inc	4,027,385
CA–28	Bay Area Legal Aid	4,747,831
CA–29	Legal Aid Foundation of Los Angeles	9,001,639
CA–30	Neighborhood Legal Services of Los Angeles County	5,317,187
CA–31	California Rural Legal Assistance, Inc	5,313,655
NCA–1	California Indian Legal Services, Inc	977,253
Colorado		
NCO–1	Colorado Legal Services	106,228
CO–6	Colorado Legal Services	3,807,036
MCO	Colorado Legal Services	163,922
Connecticut		
CT–1	Statewide Legal Services of Connecticut, Inc	2,631,089
NCT–1	Pine Tree Legal Assistance, Inc	17,316
Delaware		
DE–1	Legal Services Corporation of Delaware, Inc	686,244
MDE	Legal Aid Bureau, Inc	27,402
District of Columbia		
DC–1	Neighborhood Legal Services Program of the District of Columbia	1,117,927
Florida		
MFL	Florida Rural Legal Services, Inc	991,259
FL–13	Legal Services of North Florida, Inc	1,609,039
FL–14	Three Rivers Legal Services, Inc	1,981,855
FL–15	Community Legal Services of Mid-Florida, Inc	3,421,020
FL–16	Bay Area Legal Services, Inc	2,902,751
FL–17	Florida Rural Legal Services, Inc	3,055,943
FL–18	Coast to Coast Legal Aid of South Florida, Inc	2,054,699
FL–5	Legal Services of Greater Miami, Inc	3,918,564
Georgia		
GA–1	Atlanta Legal Aid Society, Inc	2,858,309
GA–2	Georgia Legal Services Program	7,263,340
MGA	Georgia Legal Services Program	432,735
Guam		
GU–1	Guam Legal Services Corporation	355,205
Hawaii		
HI–1	Legal Aid Society of Hawaii	1,535,889
NHI–1	Legal Aid Society of Hawaii	253,377
Idaho		
NID–1	Idaho Legal Aid Services, Inc	71,863
MID	Idaho Legal Aid Services, Inc	206,301
ID–1	Idaho Legal Aid Services, Inc	1,312,160
Illinois		
IL–3	Land of Lincoln Legal Assistance Foundation, Inc	2,732,040
IL–6	Legal Assistance Foundation of Metropolitan Chicago	7,131,567
IL–7	Prairie State Legal Services, Inc	3,050,960
MIL	Legal Assistance Foundation of Metropolitan Chicago	275,520
Indiana		
MIN	Indiana Legal Services, Inc	125,494
IN–5	Indiana Legal Services, Inc	5,586,490
Iowa		

Service area	Applicant name	Estimated annualized funding amount
MIA	Iowa Legal Aid	41,644
IA–3	Iowa Legal Aid	2,592,457
Kansas		
KS–1	Kansas Legal Services, Inc	2,632,274
Kentucky		
KY–10	Legal Aid of the Bluegrass	1,401,084
KY–2	Legal Aid Society	1,300,522
KY–5	Appalachian Research and Defense Fund of Kentucky	2,244,277
KY–9	Kentucky Legal Aid	1,348,148
MKY	Texas RioGrande Legal Aid, Inc	46,973
Louisiana		
MLA	Texas RioGrande Legal Aid, Inc	30,393
LA–1	Southeast Louisiana Legal Services Corporation	1,564,128
LA–10	Acadiana Legal Service Corporation	2,215,527
LA–11	Legal Services of North Louisiana, Inc	2,078,711
LA–12	Southeast Louisiana Legal Services Corporation	2,800,575
Maine		
ME–1	Pine Tree Legal Assistance, Inc	1,304,156
MMX–1	Pine Tree Legal Assistance, Inc	137,847
NME–1	Pine Tree Legal Assistance, Inc	71,295
Maryland		
MMD	Legal Aid Bureau, Inc	100,348
MD–1	Legal Aid Bureau, Inc	4,378,261
Massachusetts		
MA–10	Massachusetts Justice Project, Inc	1,664,935
MA–11	Volunteer Lawyers Project of the Boston Bar Association	2,247,523
MA–12	South Coastal Counties Legal Services	1,007,421
MA–4	Merrimack Valley Legal Services, Inc	916,026
Michigan		
MMI	Legal Services of South Central Michigan	664,375
MI–12	Legal Services of South Central Michigan	1,410,191
MI–13	Legal Aid and Defender Association, Inc	4,223,354
MI–14	Legal Services of Eastern Michigan	1,512,366
MI–15	Legal Aid of Western Michigan	1,840,312
MI–9	Legal Services of Northern Michigan, Inc	779,353
NMI–1	Michigan Indian Legal Services, Inc	182,088
Micronesia		
MP–1	Micronesian Legal Services, Inc	1,820,506
Minnesota		
MN–1	Legal Aid Service of Northeastern Minnesota	461,250
MN–4	Legal Services of Northwest Minnesota Corporation	413,398
MN–5	Southern Minnesota Regional Legal Services, Inc	1,343,462
MN–6	Central Minnesota Legal Services, Inc	1,445,485
MMN	Southern Minnesota Regional Legal Services, Inc	220,829
NMN–1	Anishinabe Legal Services, Inc	264,344
Mississippi		
NMS–1	Choctaw Legal Defense	91,949
MMS	Texas RioGrande Legal Aid, Inc	62,992
MS–10	Mississippi Center for Legal Services	3,317,650
MS–9	North Mississippi Rural Legal Services, Inc	2,214,904
Missouri		
MO–3	Legal Aid of Western Missouri	1,959,986
MO–4	Legal Services of Eastern Missouri, Inc	2,163,908
MO–5	Mid-Missouri Legal Services Corporation	431,367
MO–7	Legal Services of Southern Missouri	1,867,295
MMO	Legal Aid of Western Missouri	89,914
Montana		
MMT	Montana Legal Services Association	60,246
MT–1	Montana Legal Services Association	1,250,179
NMT–1	Montana Legal Services Association	176,126
Nebraska		
NNE–1	Legal Aid of Nebraska	36,563
NE–4	Legal Aid of Nebraska	1,599,789
MNE	Legal Aid of Nebraska	46,667
Nevada		
NV–1	Nevada Legal Services, Inc	2,099,916
NNV–1	Nevada Legal Services, Inc	147,087
New Hampshire		
NH–1	Legal Advice & Referral Center, Inc	790,767
New Jersey		
MNJ	South Jersey Legal Services, Inc	133,181

Service area	Applicant name	Estimated annualized funding amount
NJ–12	Ocean-Monmouth Legal Services, Inc	734,922
NJ–15	Legal Services of Northwest Jersey	433,592
NJ–16	South Jersey Legal Services, Inc	1,476,072
NJ–17	Central Jersey Legal Services, Inc	1,204,829
NJ–18	Northeast New Jersey Legal Services Corporation	1,960,701
NJ–8	Essex-Newark Legal Services Project, Inc	1,199,878
New Mexico		
NM–1	DNA–Peoples Legal Services, Inc	239,583
NM–5	New Mexico Legal Aid	3,022,221
NNM–2	DNA–Peoples Legal Services, Inc	25,129
NNM–4	New Mexico Legal Aid	513,951
MNM	New Mexico Legal Aid	96,397
New York		
MNY	Legal Aid Society of Mid-New York, Inc	305,516
NY–20	Legal Services of the Hudson Valley	1,974,810
NY–21	Legal Aid Society of Northeastern New York, Inc	1,483,208
NY–22	Legal Aid Society of Mid-New York, Inc	1,944,131
NY–23	Legal Assistance of Western New York, Inc	1,905,785
NY–24	Neighborhood Legal Services, Inc	1,484,005
NY–7	Nassau/Suffolk Law Services Committee, Inc	1,535,245
NY–9	Legal Services NYC	16,853,009
North Carolina		
MNC	Legal Aid of North Carolina, Inc	591,552
NC–5	Legal Aid of North Carolina, Inc	9,195,842
NNC–1	Legal Aid of North Carolina, Inc	241,409
North Dakota		
NND–3	Legal Services of North Dakota	297,960
ND–3	Legal Services of North Dakota	622,017
MND	Southern Minnesota Regional Legal Services, Inc	127,934
Ohio		
MOH	Legal Aid of Western Ohio, Inc	139,031
OH–17	Ohio State Legal Services	1,885,131
OH–18	Legal Aid Society of Greater Cincinnati	1,589,753
OH–20	Community Legal Aid Services, Inc	1,839,322
OH–21	The Legal Aid Society of Cleveland	2,340,183
OH–23	Legal Aid of Western Ohio, Inc	2,751,325
OH–5	Ohio State Legal Services	1,407,353
Oklahoma		
OK–3	Legal Aid Services of Oklahoma, Inc	4,946,137
MOK	Legal Aid Services of Oklahoma, Inc	69,066
NOK–1	Oklahoma Indian Legal Services, Inc	905,688
Oregon		
NOR–1	Legal Aid Services of Oregon	204,192
MOR	Legal Aid Services of Oregon	614,809
OR–6	Legal Aid Services of Oregon	3,353,985
Pennsylvania		
PA–1	Philadelphia Legal Assistance Center	3,387,502
PA–11	Southwestern Pennsylvania Legal Services, Inc	611,440
PA–23	Legal Aid of Southeastern Pennsylvania	1,243,870
PA–24	North Penn Legal Services, Inc	1,984,254
PA–25	MidPenn Legal Services, Inc	2,427,504
PA–26	Northwestern Legal Services	800,640
PA–5	Laurel Legal Services, Inc	841,600
PA–8	Neighborhood Legal Services Association	1,834,482
MPA	Philadelphia Legal Assistance Center	182,932
Puerto Rico		
MPR	Puerto Rico Legal Services, Inc	320,901
PR–1	Puerto Rico Legal Services, Inc	17,868,474
PR–2	Community Law Office, Inc	378,288
Rhode Island		
RI–1	Rhode Island Legal Services, Inc	1,228,770
South Carolina		
SC–8	South Carolina Legal Services, Inc	5,375,084
MSC	Georgia Legal Services Program	218,317
MSC	South Carolina Legal Services, Inc	218,317
South Dakota		
SD–2	East River Legal Services	448,212
SD–4	Dakota Plains Legal Services, Inc	530,867
NSD–1	Dakota Plains Legal Services, Inc	1,032,795
Tennessee		
TN–10	Legal Aid Society of Middle Tennessee and the Cumberlands	2,856,421

Service area	Applicant name	Estimated annualized funding amount
TN–4	Memphis Area Legal Services, Inc	1,569,049
TN–7	West Tennessee Legal Services, Inc	732,012
TN–9	Legal Aid of East Tennessee	2,396,764
MTN	Texas RioGrande Legal Aid, Inc	70,006
Texas		
MTX	Texas RioGrande Legal Aid, Inc	1,533,122
TX–13	Lone Star Legal Aid	10,585,818
TX–14	Legal Aid of NorthWest Texas	8,352,006
TX–15	Texas RioGrande Legal Aid, Inc	11,357,903
NTX–1	Texas RioGrande Legal Aid, Inc	34,619
Utah		
NUT–1	Utah Legal Services, Inc	91,002
UT–1	Utah Legal Services, Inc	2,031,615
MUT	Utah Legal Services, Inc	74,865
Vermont		
VT–1	Legal Services Law Line of Vermont, Inc	557,738
Virgin Islands		
VI–1	Legal Services of the Virgin Islands, Inc	356,624
Virginia		
MVA	Central Virginia Legal Aid Society, Inc	174,080
VA–15	Southwest Virginia Legal Aid Society, Inc	905,674
VA–16	Legal Aid Society of Eastern Virginia	1,564,587
VA–17	Virginia Legal Aid Society, Inc	942,785
VA–18	Central Virginia Legal Aid Society, Inc	1,111,444
VA–19	Blue Ridge Legal Services, Inc	784,193
VA–20	Legal Services of Northern Virginia, Inc	1,221,134
Washington		
MWA	Northwest Justice Project	805,632
WA–1	Northwest Justice Project	5,446,285
NWA–1	Northwest Justice Project	315,101
West Virginia		
WV–5	Legal Aid of West Virginia, Inc	3,224,060
Wisconsin		
NWI–1	Wisconsin Judicare, Inc	171,585
WI–2	Wisconsin Judicare, Inc	972,331
WI–5	Legal Action of Wisconsin, Inc	3,537,100
MWI	Legal Action of Wisconsin, Inc	100,491
Wyoming		
NWY–1	Legal Aid of Wyoming, Inc	191,143
WY–4	Legal Aid of Wyoming, Inc	559,240

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2012.

Dated: October 28, 2011.

Janet LaBella,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 2011–28482 Filed 11–2–11; 8:45 am]

BILLING CODE 7050–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Corporate Administration Committee Board of Directors Meeting; Sunshine Act

Time and Date: 1 p.m., Monday, November 14, 2011.

Place: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

Status: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call To Order

Executive Session

II. Update—Human Resources

III. Benefits Activities

IV. PeopleSoft Implementation Update

V. Strategic Planning Implementation

VI. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2011–28567 Filed 11–1–11; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–182, NRC–2011–0186]

License Renewal Application for Purdue University

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; request for comment and hearing, and Order.

DATES: Submit comments by January 3, 2012. Requests for a hearing or leave to intervene must be filed by January 3, 2012. Any potential party as defined in Title 10 of the Code of Federal

Regulations (10 CFR), 2.4 who believes access to Safeguards Information (SGI) and Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by November 14, 2011.

ADDRESSES: Please include Docket ID 2011–0186 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID 2011–0186. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Duane A. Hardesty, Project Manager, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–3724; fax number: (301) 415–1032; email: *Duane.Hardestry@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* The initial application and other related documents may be accessed in ADAMS, under Accession Nos.: ML083040443, ML111890201, ML101620125, and ML101620184.
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0186.

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal and thermal power uprate of Facility Operating License No. R–087 (''Application''), which currently authorizes Purdue University (the licensee) to operate the Purdue University Reactor (PUR–1) at a maximum steady-state thermal power of 1 kilowatt (kW) thermal power. The renewed license and thermal power uprate would authorize the applicant to operate PUR–1 up to a steady-state thermal power of 12.5 kW (thermal) for an additional 20 years from the date of issuance.

On July 7, 2008, as supplemented by letters dated June 3, and June 4, 2010, the NRC received an application from the licensee filed pursuant to 10 CFR 50.51(a), to renew Facility Operating License No. R–087 for the PUR–1. Because the license renewal application was filed at least thirty days before expiration (August 8, 2008), in accordance with 10 CFR 2.109, the existing license will not be deemed to have expired until the license renewal application has been finally determined.

The Application contains SUNSI and SGI.

Based on its initial review of the application, the Commission's staff determined that PUR–1 submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 so that the application is acceptable for docketing. The current Docket No. 50–182 for Facility Operating License No. R–087 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

III. Opportunity To Request a Hearing; Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–(800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cf/.*

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to

have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies; thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 3, 2012. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that States, local governmental bodies, and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparties pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by January 3, 2012.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format 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 email notice confirming receipt of the document. The

E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MDHD.Resource@nrc.gov,* or by a toll-free call at 1–(866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from November 3, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

The NRC maintains an ADAMS, which provides text and image files of the NRC's public documents. Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the documents NUREG–1537, entitled ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors'' and the ''Interim Staff Guidance on the Streamlined Review Process for License Renewal for Research Reactors'' (ISG) which can be obtained from the NRC's PDR. The detailed review guidance (NUREG–1537 and the ISG) may be accessed online in the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML042430055 for part one of NUREG–1537, ML042430048 for part two of NUREG–1537, and ML092240244 for the ISG. Copies of the application to renew the facility license from the licensee are available for public inspection at the NRC's PDR, One White Flint North, Room O1–F21, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The initial application and other related documents may be accessed in ADAMS under ADAMS Accession Nos.: ML083040443, ML111890201, ML101620125, and ML101620184. Persons who do not have access to ADAMS, 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 email to *pdr.resource@nrc.gov.*

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and SGI). Requirements for access to SGI are primarily set forth in 10 CFR Parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions'' for each individual who would have requested access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR Part 2, Subpart G and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at (301) 492–3524.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232 or (301) 492–7311, or by email to *Forms.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check;

(d) A check or money order payable in the amount of $200.00 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB–05–B32M, Washington, DC 20555–0001.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [5] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be

Continued

each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 28th day of October, 2011.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	NRC staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.

filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv).
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–28498 Filed 11–2–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–28; Order No. 933]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ferguson, Iowa 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: November 4, 2011: Administrative record due (from Postal Service); November 21, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene.

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 October 20, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ferguson post office in Ferguson, Iowa. The petition for review was filed by Dale Thompson, Mayor, and Members of the Ferguson City Council (Petitioners) and is postmarked October 13, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–28 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 25, 2011.

Categories of issues apparently raised. Petitioners contend that (1) 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)); (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)); (3) failure of the Postal Service to follow procedures required by law regarding closures (*see* 39 U.S.C. 404(d)(5)(B)); and (4) Petitioners contend that there are factual errors contained in the Final Determination.

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 November 4, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 4, 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 participant's submissions also will be posted on the 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

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 the Petitioners and respondents, 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 November 21, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 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 November 4, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 4, 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 and Procedural Schedule in the **Federal Register.**

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

October 20, 2011	Filing of Appeal.
November 4, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 4, 2011	Deadline for the Postal Service to file any responsive pleading.
November 21, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 25, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 15, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 30, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 6, 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).
February 10, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–28455 Filed 11–2–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–31; Order No. 936]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ogden, Arkansas 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: November 8, 2011: Administrative record due (from Postal Service); November 22, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene.

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 October 24, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ogden post office in Ogden, Arkansas. The petition for review was filed by Sandra Furlow, Mayor, City of Ogden (Petitioner) and is postmarked October 12, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–31 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 28, 2011.

Categories of issues apparently raised. Petitioner contends that 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 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 November 8, 2011. *See* 39 CFR 3001.113. In addition, the

due date for any responsive pleading by the Postal Service to this notice is November 8, 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 participant's submissions also will be posted on the 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

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 the Petitioners and respondents, 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 November 22, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 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 November 8, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 8, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Derrick 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 and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 24, 2011	Filing of Appeal.
November 8, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 8, 2011	Deadline for the Postal Service to file any responsive pleading.
November 22, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 28, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 19, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 3, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 10, 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).
February 9, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–28514 Filed 11–2–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–30; Order No. 935]

Post Office Closing

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the McFarlan, North Carolina 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: November 7, 2011: Administrative record due (from Postal Service); November 22, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene.

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 October 21, 2011, the Commission received a petition for review of the Postal Service's determination to close the McFarlan post office in McFarlan, North Carolina. The petition for review was filed by Cleveland Melton (Petitioner). The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–30 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 25, 2011.

Categories of issues 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 November 7, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 7, 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 participant's submissions also will be posted on the 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

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 the Petitioners and respondents, 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 November 22, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 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 November 7, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 7, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James 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 and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 21, 2011	Filing of Appeal.
November 7, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 7, 2011	Deadline for the Postal Service to file any responsive pleading.
November 22, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 25, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 15, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 30, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 6, 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).
February 18, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–28505 Filed 11–2–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–29; Order No. 934]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Glencliff, New Hampshire 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:

November 7, 2011: Administrative record due (from Postal Service);

November 22, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *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 October 21, 2011, the Commission received a petition for review of the Postal Service's determination to close the Glencliff post office in Glencliff, New Hampshire. The petition for review was filed by Helen Maggie Carr (Petitioner) and is postmarked October 19, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–29 to consider Petitioner's appeal. If Petitioner would like to further explain her 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 25, 2011.

Categories of issues apparently raised. Petitioner contends that (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (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) Petitioner contends that there are factual errors contained in the Final Determination.

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 November 7, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 7, 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 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

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 the Petitioners and respondents, 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 November 22, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 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 November 7, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 7, 2011.

3. The procedural schedule listed below is hereby adopted.

4. 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.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 21, 2011	Filing of Appeal.
November 7, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 7, 2011	Deadline for the Postal Service to file any responsive pleading.
November 22, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 25, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 15, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 30, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 6, 2012	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).
February 16, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–28483 Filed 11–2–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65648; File No. SR–OCC–2011–12]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change To Adopt Fitness Standards for Directors, Clearing Members, and Others

October 27, 2011.

I. Introduction

On August 31, 2011, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2011–12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on September 19, 2011.[3] No comment letters were received. This order approves the proposed rule change.

II. Description

The purpose of this rule change is to facilitate compliance by OCC with new core principles (''Core Principles'') applicable to derivatives clearing organizations (''DCOs'') that are set forth in the Commodity Exchange Act (''CEA''), as amended by the Dodd-Frank Act. In particular, new DCO Core Principle O requires DCOs to establish fitness standards for directors, clearing members and certain other individuals.

Background

The Core Principles for DCOs are set forth in the CEA and consist of a number of governing principles to which a DCO is required to adhere. OCC is registered as a DCO with the Commodity Futures Trading Commission (the ''CFTC'') under Section 5b of the CEA, and clears commodity futures and commodity options traded on five futures exchanges subject to the CFTC's jurisdiction. Title VII of the Dodd-Frank Act amended the CEA to expand existing Core Principles and to add certain new Core Principles. The applicable Dodd-Frank amendments to the CEA become effective July 16, 2011. In January 2011, the CFTC published proposed rules (the ''Proposed Rules'') to implement the Core Principles, as amended and expanded by the Dodd Frank Act.[4] The Proposed Rules propose certain minimum criteria for complying with the Core Principles, and propose certain clarifications of the more ambiguous provisions of the Core Principles. The Proposed Rules have not been adopted and will not be effective until 60 days following the date on which the CFTC publishes final rules implementing the Core Principles.

Core Principle O provides that each DCO must: (i) Establish governance arrangements that are transparent (I) To fulfill public interest requirements and (II) to permit the consideration of the views of both owners and participants, and (ii) establish and enforce appropriate fitness standards for (I) directors, (II) members of any disciplinary committee, (III) members of the DCO, (IV) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (V) any party affiliated with any of the above. OCC believes that its existing governance arrangements satisfy the transparency requirements of subparagraph (i) of Core Principle O. OCC proposed to adopt the Fitness

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65338 (September 14, 2011); 76 FR 58061 (September 19, 2011).

[4] *See* 76 FR 722 (January 6, 2011).

Standards [5] in order to assure compliance with subparagraph (ii) of Core Principle O.

Description of Fitness Standards

OCC believes that its Fitness Standards comply with Core Principle O by establishing minimum standards for directors and clearing members, as well as affiliates of such directors and clearing members.[6] The Fitness Standards are generally similar to fitness standards adopted by the Depository Trust and Clearing Corporation.

OCC believes that the Fitness Standards incorporate the Proposed Rule's minimum fitness standards for directors and clearing members, including the bases for refusal to register a person under Section 8a(2) of the CEA and, for directors only, the absence of a significant history of serious disciplinary offences, such as those that would be disqualifying under Section 1.63 of the CFTC's regulations. The Fitness Standards do not establish criteria for members of the disciplinary committee or for persons ''with direct access to the settlement or clearing activities'' of OCC (''Access Persons''). In OCC's case, all members of disciplinary committees [7] are directors of the Corporation and will be subject to the Fitness Standards as such. With respect to Access Persons, neither the CEA nor the Proposed Rules provide any explicit guidance as to the persons intended to be included in the phrase ''any other individual or entity with direct access to the settlement or clearing activities of the [DCO].'' Similarly, the term ''direct access'' is not defined in the CEA or the Proposed Rules. However, Core Principle O is closely modeled on existing designated contract market (''DCM'') Core Principle 14, which also requires that fitness standards be established for directors, members and ''any other persons with direct access to the facility.'' The CFTC has previously issued guidance on DCM Core Principle 14 and interpreted ''persons with direct access to the facility'' to include ''non-member market participants who are not intermediated and do not have [member] privileges, obligations, responsibilities or disciplinary authority.'' This interpretation suggests that ''access'' is intended to mean the type of access that a member would have. OCC believes that by analogy ''persons with direct access to the settlement or clearing activities'' of a DCO, as used in Core Principle O, is intended to refer to persons with access to submit transactions for clearing or to give instructions to OCC regarding accounts or transactions or otherwise have access to the clearing system in a manner similar to the access that a Clearing Member would have. OCC also does not read ''any other individual or entity with direct access to the settlement or clearing activities of the [DCO]'' to include OCC employees or service providers such as settlement banks. Accordingly, OCC believes that there are presently no persons with ''direct access'' to the settlement and clearing activities of OCC other than clearing members.

By-Law Changes

Article III (Board of Directors) and Article V (Clearing Members) set forth qualifications for directors and clearing members, respectively. The Interpretations and Policies under the appropriate sections of both Articles are being amended to incorporate the applicable Fitness Standards by reference.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Sections 17A(b)(3)(A) and (C) of the Act.[8] Section 17A(b)(3)(A) of the Act requires that a clearing agency is so organized to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed rule change establishes Fitness Standards for the purpose of permitting OCC to comply with new Core Principle O, applicable to DCOs under the CEA. The proposed rule change is consistent with 17A(b)(3)(A) because it is designed to assure that OCC has the governance structure in place to clear and settle the transactions that it clears and settles as DCO. Furthermore, the Commission notes that the proposed rule change does not affect OCC's governance structure with respect to the fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. Accordingly, OCC's rules should continue to assure the fair representation of its shareholders and participants as required by Section 17A(b)(3)(C).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–OCC–2011–12) be, and hereby is, approved.[11]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–28459 Filed 11–2–11; 8:45 am]

BILLING CODE 8011–01–P

[5] This rule change adds Interpretations and Policies entitled ''Fitness Standards'' to Sections 2, 6, 6A, and 7 of Article III and Section 1 of Article V of OCC's By-Laws.

[6] OCC has noted that in a prior discussion with the CFTC staff, the CFTC staff indicated that the proposed rule change may become effective after July 16, 2011 without impacting OCC's status as a DCO.

[7] OCC has no standing disciplinary committee. Disciplinary committees are formed on an *ad hoc* basis. *See* OCC Rule 1202(a).

[8] 15 U.S.C. 78q–1(b)(3)(A) and (C).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65653; File No. SR–NASDAQ–2011–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Describe Complimentary Services That Are Offered to Certain New Listings on NASDAQ's Global and Global Select Markets

October 28, 2011.

On August 30, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add rule text explaining services offered by NASDAQ to certain newly listing companies and the retail value of such services. The proposed rule change was published for comment in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Register on September 16, 2011.[3] The Commission received four comment letters on the proposal.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is October 31, 2011.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, as described above, and to consider the comment letters that have been submitted in connection with the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates December 15, 2011 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR–NASDAQ–2011–122).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–28460 Filed 11–2–11; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 65324 (September 12, 2011), 76 FR 57781 (September 16, 2011).

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Neil Hershberg, Senior Vice President, Business Wire Inc., dated September 28, 2011; John Viglotti, Vice President, PR Newswire Association LLC, dated October 7, 2011; Jesse W. Markham, Jr., Roger Myers, and Michael R. MacPhail, Holme Roberts & Owen LLP (writing on behalf of Business Wire, Inc.), dated October 7, 2011; and Patrick Healy, CEO, Issuer Advisory Group LLC, dated October 22, 2011.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65654; File No. SR–OCC–2011–08]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Provide Specific Authority To Use an Auction Process as One of the Means To Liquidate a Defaulting Clearing Member's Accounts

October 28, 2011.

I. Introduction

On July 28, 2011, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2011–08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 3, 2011.[3] On September 15, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 was published in the **Federal Register** on September 27, 2011.[4] The Commission received no comment letters on the proposed rule change or Amendment No. 1. This order approves the proposed rule change as modified by Amendment No. 1.

II. Description

OCC is revising its rules to provide specific authority for OCC to use an auction process as one of the possible means by which OCC may liquidate a defaulting clearing member's accounts.[5] An auction is likely to be the most efficient and orderly procedure practicable for closing out clearing member portfolios in some circumstances.

The liquidation of open long and short positions through exchange transactions is an obvious means of closing out the positions of a defaulting member. However, auctions are increasingly viewed as an efficient and cost effective alternative for liquidating some or all of a clearing member's positions and collateral, especially where the positions are very large or in unstable market conditions. As compared to liquidating positions through exchange transactions, an auction may usually be expected to result in a shorter liquidation period and reduced execution risk. During Lehman Brothers Holdings Inc.'s liquidation, clearinghouses such as LCH. Clearnet and CME Clearing liquidated certain derivatives positions through auctions.

Chapter XI of OCC's Rules, which governs the liquidation of a clearing member's accounts in the event of an insolvency, provides that open positions of a clearing member must be closed by OCC ''in the most orderly manner practicable.'' While OCC and its counsel believe that this language is broad enough to authorize a private auction, *i.e.,* an auction limited to selected bidders, as a means of closing out open positions, OCC also believes that explicit authorization for a private auction procedure could reduce the likelihood of a legal challenge should such a procedure be utilized.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that, among other things, the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and, to the extent applicable, derivative agreements, contracts, and transactions.[6] The proposed rule change is designed to ensure OCC has the tools necessary to liquidate the open positions and margin of a defaulting member in order to meet its settlement obligations to non-defaulting members promptly and in a manner that is least disruptive to the securities markets. OCC has not yet established detailed procedures for conducting an auction; however, any such auction must comply with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 64982 (July 28, 2011), 76 FR 46867 (August 3, 2011).

[4] Securities Exchange Act Release No. 65370 (September 21, 2011), 76 FR 59750 (September 27, 2011). The proposed rule change as originally filed revises OCC Rule 1104 (margins deposited and contributions to the Clearing Fund) to clarify that the auction process is one way to liquidate a defaulting members accounts with respect to positions and collateral in a defaulting member's accounts. Amendment No. 1 to the proposed rule change also revises OCC Rule 1106 (open positions of a suspended clearing member) in a similar manner. Accordingly, as amended, the proposed rule change clarifies that the auction process is one way to liquidate a defaulting members accounts with respect to positions and collateral in a defaulting member's accounts under both OCC Rule 1104 and OCC Rule 1106. Telephone conference between Stephen Szarmack, Vice President and Associate General Counsel, OCC, and Pamela Kesner, Special Counsel, Securities and Exchange Commission Division of Trading and Markets, on September 20, 2011.

[5] The specific language of the proposed provision can be found at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_08_a_1.pdf.*

[6] 15 U.S.C. 78q–1(b)(3)(F).

requirements of Section 17A, including requirements that the rules of a clearing agency are, in general, designed to protect investors and the public interest and are not designed to permit unfair discrimination among participants in the use of the clearing agency.[7]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change, as modified by Amendment No. 1, (File No. SR–OCC–2011–08) be, and hereby is, approved.[10]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2011–28461 Filed 11–2–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65659; File No. SR–CBOE–2011–098]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to FLEX Options

October 31, 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 October 17, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) 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 Substance of the Proposed Rule Change

The Exchange is proposing to amend certain rules pertaining to Flexible Exchange Options (''FLEX Options''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices (referred to as ''variable terms'').[5] For example, FLEX Options can have an expiration date that is any business day (specified as to day, month and year) with a maximum term of fifteen years.[6] The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform are generally contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are generally contained in Chapter XXIVB. Within each Chapter, the provisions pertaining to the variable terms of FLEX Options are generally contained in Rules 24A.4 and 24B.4.

The purpose of this proposed rule change is to reorganize and amend certain Exchange Rules pertaining to FLEX Options to provide within Chapters XXIVA and XXIVB that a new series of FLEX Options may be established on any business day prior to the expiration date. The adding of new FLEX Equity Options series on any business day prior to the expiration date is already addressed in Rule 5.5 of Chapter V of the Exchange Rules.[7] In an effort to make reading and understanding the FLEX Option provisions easier, the Exchange is proposing to move this new series add provision *from* Rule 5.5 of Chapter V *to* Rules 24A.4 and 24B.4 of Chapters XXIVA and XXIVB, respectively. In addition, the Exchange is proposing to apply the provision to all FLEX Options (not just FLEX Equity Options).[8] Previously the rules did not clearly address the applicability of any such provision to other FLEX Options. However, it has been the Exchange's practice to permit other FLEX Options to be listed any business day prior to the expiration date.

The Exchange believes that reorganizing and amending the rules in the manner proposed should make it easier to read and understand the FLEX Options provisions. The Exchange also believes that it should provide additional clarity and avoid any confusion on the applicability of the new series add provision to any and all FLEX Options in a manner that is consistent with the existing provision for FLEX Equity Options.

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[7] *Id.*

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17.

[6] *See* Rule 24A.4(a)(2)(iv) and (a)(4)(i), and Rule 24B.4(a)(2)(iv) and (a)(5)(i).

[7] Rule 5.5 generally sets forth provisions pertaining to series of options that may be open for trading on the Exchange and generally pertains to option contracts that are not FLEX Options. However, Rule 5.5.04 currently provides as follows: ''New series of options on an individual stock may be added until the beginning of the month in which the option contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add new series of options on an individual stock until five business days prior to expiration. Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter XXIVA or XXIVB of the Rules, may be added on any business day prior to the expiration date.''

[8] Specifically, the Exchange is proposing to delete the following sentence from Rule 5.5.04: ''Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter XXIVA or XXIVB of the Rules, may be added on any business day prior to the expiration date.'' And, the Exchange is proposing to add the following sentence to both Rule 24A.4(a)(1) and 24B.4(a)(1): ''A new series of FLEX Options may be established on any business day prior to the expiration date as provided for in this Rule [24A.4 or 24B.4, as applicable].''

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [9] in general and furthers the objectives of Section 6(b)(5) of the Act [10] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that reorganizing and amending the rules in the manner proposed should make it easier to read and understand the FLEX Options provisions. The Exchange also believes that it should provide additional clarity and avoid any confusion on the applicability of the new series add provision to any and all FLEX Options in a manner that is consistent with the existing provision for FLEX Equity Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b-4(f)(6) thereunder.[12] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–098 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–098. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–098 and should be submitted on or before November 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–28513 Filed 11–2–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b-4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65656; File No. SR–FINRA–2011–062]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Repeal Incorporated NYSE Rule 2A (Jurisdiction)

October 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. 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

FINRA is proposing to repeal Incorporated NYSE Rule 2A (Jurisdiction) as part of the process of developing a consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] the proposed rule change would repeal NYSE Rule 2A (Jurisdiction) from the FINRA rulebook as described below. NYSE Rule 2A generally addresses jurisdictional authority with respect to, among other things, rulemaking, examinations, disciplinary actions, and listing applications. NYSE Rule 2A was adopted in 2006 as part of the merger between the New York Stock Exchange LLC (''NYSE'') and Archipelago Holdings, Inc. in light of the fact that the NYSE Constitution, which contained the jurisdiction provisions for the NYSE, was eliminated in the merger.[4]

The FINRA By-Laws, as approved by the membership and the SEC in 2007, address the powers and authority of the FINRA Board of Governors (''Board'') and, together with the Exchange Act, set forth FINRA's authority and responsibilities as a registered securities association. As outlined below, those matters addressed by NYSE Rule 2A that are relevant to a registered securities association are currently addressed by the FINRA By-Laws and Exchange Act, including jurisdictional authority with respect to:

- Rulemaking; [5]
- General supervisory powers over members, member organizations (and any other broker-dealer that chooses to be regulated by the NYSE) and their offices, partnership and corporate arrangements, their principal executives, employees and approved persons in connection with their conduct of the business of member organizations; [6]
- jurisdiction to discipline members, member organizations (and any other broker-dealer that chooses to be regulated by the NYSE), principal executives, employees and approved persons in connection with their conduct of the business of member organizations; and [7]
- Jurisdiction over any and all other functions of members, member organizations (and any other broker-dealer that chooses to be regulated by the NYSE), principal executives, employees and approved persons in connection with the conduct of the business of member organizations in order for the NYSE to comply with its statutory obligation as a self-regulatory organization.[8]

FINRA further notes that other matters addressed by NYSE Rule 2A are not applicable to the operations of a registered securities association that does not operate a listing market or are otherwise unique to the NYSE, including:

- Approving applications for the listing and admission of securities to dealings on the NYSE, as well as suspending dealings in and removing securities from listing;
- Supervising all matters relating to the collection, dissemination and use of quotations and of reports of prices on the NYSE;
- The power to approve or disapprove any connection or means of communication with the floor and requiring the discontinuance of any such connection or means of communication; and
- Disapproving any member acting as a Designated Market Maker or odd-lot dealer on the NYSE.

Therefore, FINRA considers the transfer of NYSE Rule 2A to the Consolidated FINRA Rulebook to be unnecessary and proposes that it be eliminated.[9]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 150 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will streamline and improve FINRA's rulebook by eliminating a rule that is not necessary or appropriate for the Consolidated FINRA Rulebook. As further discussed above, the FINRA By-Laws address the powers and authority of the Board and, together with the Exchange Act, set forth FINRA's authority and responsibilities as a registered securities association.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[4] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (Order Approving File No. SR–NYSE–2005–77).

[5] *See, e.g.,* FINRA By-Laws, Article III, Section 2, Article VII, Section 1 and Exchange Act Section 15A.

[6] *See, e.g., supra* note 5 and FINRA By-Laws, Article VI, Section 5 and Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries, Article II, Section A. In contrast to the NYSE's jurisdictional provisions, which extend to ''approved persons,'' as defined in NYSE Rule 2(c), FINRA regulates its members and ''persons associated with a member,'' as defined in FINRA By-Laws, Article 1 (rr). With respect to the ability to obtain information regarding members' affiliates, FINRA is addressing such authority as part of a separate proposal. *See Regulatory Notice* 10–01 (January 2010).

[7] *See, e.g., supra* note 5, and FINRA By-Laws, Article VI, Section 5 and Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries, Article II, Section A. Based on earlier Board authority, FINRA repealed NYSE Rule 477 (Retention of Jurisdiction) and continues to use FINRA's retention of jurisdiction provisions in the FINRA By-laws. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR–FINRA–2008–029).

[8] *See, e.g., supra* note 5, and FINRA By-Laws, Article VI, Section 5 and Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries, Article II, Section A.

[9] FINRA anticipates that the NYSE will retain a version of NYSE Rule 2A.

[10] 15 U.S.C. 78*o*–3(b)(6).

organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–062 and should be submitted on or before November 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–28512 Filed 11–2–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65655; File No. SR–CME–2011–07]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Order Approving Proposed Rule Change To Accept Additional Credit Default Index Swaps for Clearing

October 28, 2011.

I. Introduction

On September 9, 2011, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–CME–2011–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on September 28, 2011.[3] The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The rule change will permit CME to expand its ability to clear credit default swap (''CDS'') contracts referencing broad-based securities indices by permitting CME to clear CDS contracts referencing the Markit CDX North American High Yield Index Series 11, 12, 13, 14, 15, 16 and 17, in each case solely with respect to contracts referencing the applicable index with an original tenor of five years. As of the date that it filed this rule change, CME offered for clearing CDS contracts referencing the Markit CDX North American Investment Grade Index Series 10, 11, 12, 13, 14, 15, 16 and 17.[4]

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[5] In particular, Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of such clearing agency or for which it is responsible.

The proposed rule change would make additional CDS contracts eligible for central clearing at CME and thus would facilitate the prompt and accurate clearance and settlement of derivative agreements, contracts and transactions. CME's rules and procedures for clearing CDS contracts referencing broad-based securities indices, particularly those pertaining to its risk management operations and financial safeguards systems, are also designed to limit the risk of financial loss to CME and its members as a result of these additional CDS contracts. Thus, the proposed rule change to permit CME to clear and settle CDS contracts referencing the Markit CDX North American High Yield Index Series 11, 12, 13, 14, 15, 16 and 17 is consistent with the requirement that CME assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[7]

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–65378 (September 22, 2011), 76 FR 60110 (September 28, 2011). In its filing with the Commission, CME included statements concerning the purpose of and basis for the proposed rule change. The text of these statements are incorporated into the discussion of the proposed rule change in Section II below.

[4] CME subsequently filed a rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(4)(i) thereunder to allow it to clear CDS contracts referencing the Markit CDX North American Investment Grade Index Series 9. *See* Securities Exchange Act Release No. 34–65489 (October 5, 2011), 76 FR 63339 (October 12, 2011). For CDS contracts referencing the Markit CDX North American Investment Grade Index Series 9 and 10, CME's rule permit the clearing of contracts referencing the applicable index with an original tenor of five, seven or ten years. For CDS contracts referencing the Markit CDX North American Investment Grade Index Series 11, 12, 13, 14, 15, 16 and 17, CME's rule permit the clearing of contracts referencing the applicable index with an original tenor of three, five, seven or ten years.

[5] 15 U.S.C. 78s(b)(2)(B).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] Moreover, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 was passed by Congress and signed into law by the President to, among other things, ensure that, wherever possible and appropriate, derivatives contracts

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–CME–2011–07) be, and hereby is, approved.[10]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–28462 Filed 11–2–11; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0068]

Social Security Rulings, SSR 91–1c and SSR 66–18c; Rescission of Social Security Rulings (SSR) 66–18c and SSR 91–1c

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Rulings.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of the rescission of Social Security Rulings (SSR) 66–18c and SSR 91–1c.

DATES: *Effective Date:* This rescission will be effective on November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Joann S. Anderson, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–6716 or TTY (410) 966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-(800) 772–1213 or TTY 1–(800) 325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: SSRs make available to the public precedential decisions related to the Federal old age, disability, Supplemental Security Income, special veterans' benefits, and black lung benefits programs. SSRs may be based on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other interpretations of the law and regulations.

We have historically presumed that corporate officers and self-employed individuals could report less than their actual earnings to avoid deductions from retirement benefits under the annual earnings test. Accordingly, we developed detailed procedures to question earnings reported by corporate officers and self-employed individuals during periods of alleged retirement. These procedures sometimes entailed extensive interviews regarding the nature and extent of the individual's business activities and the distribution of income within the company or corporation.

In 1966, we issued SSR 66–18c to reflect the district court's decision in *Hellberg* v. *Celebrezze,* 245 F.Supp. 390 (W.D. Mo. 1965), in which the court held that we have the authority to investigate the validity of a business transfer to determine its sufficiency for purposes of the annual earnings test. The court found that we could declare a transfer invalid for earnings test purposes, even though it is valid for other purposes under State law, if the former legal titleholder retains a beneficial interest in the business and continues to perform substantially similar services for the business after the transfer.

On February 5, 1991, we issued SSR 91–1c to reflect the decision of the United States Court of Appeals for the Eleventh Circuit in *Martin* v. *Sullivan,* 894 F.2d 1520 (11th Cir. 1990). The court determined that we have the authority to investigate any business arrangements that appear to be for the purpose of qualifying for benefits or avoiding benefit deductions under the annual earnings test.

We recently decided to eliminate our current procedures for questioning corporate officers' and self-employed individuals' allegations of retirement. We have found that, over the long term, questioning retirement allegations has made no significant difference in Trust Fund outlays. By eliminating our questionable retirement procedures, we will reduce the public burden, save our scarce administrative resources, and increase the efficiency of the retirement determination process.

Since we are eliminating our current procedures for questioning corporate officers' and self-employed individuals' retirement allegations, the SSRs that relate to those procedures are no longer needed. Therefore, we are rescinding SSR 66–18c and SSR 91–1c as obsolete.

(Catalog of Federal Domestic Assistance Program Nos. 96.002, Social Security-Retirement Insurance, and 96.004 Social Security-Survivors Insurance)

Dated: October 27, 2011.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2011–28533 Filed 11–2–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7671]

Youth Leadership Program: TechGirls

Overview Information

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program: TechGirls.

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/PY–12–10.

Catalog of Federal Domestic Assistance Number: 19.415.

Application Deadline: December 15, 2011.

Executive Summary

The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the new Youth Leadership Program ''TechGirls.'' Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct a three- to five-week exchange program in the United States in Summer 2012 focused on promoting high-level study of technology for high school girls from the Middle East and North Africa. U.S. Embassies in the participating countries and territories will recruit, screen, and select the teenage girls. The

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formerly traded exclusively in the over-the-counter market be cleared. *See, e.g.,* Report of the Senate Committee on Banking, Housing, and Urban Affairs regarding The Restoring American Financial Stability Act of 2010, S. Rep. No. 111–176 at 34 (stating that ''[s]ome parts of the OTC market may not be suitable for clearing and exchange trading due to individual business needs of certain users. Those users should retain the ability to engage in customized, uncleared contracts while bringing in as much of the OTC market under the centrally cleared and exchange-traded framework as possible.''). The Commission believes that expanding CME's ability to clear CDS contracts referencing broad-based securities indices will facilitate bringing additional security-based swaps into clearing, particularly with respect to the individual components of these indices.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

program will provide an exchange of academic study of applied technology for girls who already have a demonstrated aptitude and strong interest in the subject, will empower girls to pursue higher education and careers in technology, and will support activities in the participants' home countries that are designed to reinforce and support the skills and linkages acquired during the U.S. program.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Background

In July 2011, Secretary Clinton announced the launch of a youth exchange program called TechGirls ''to encourage innovation and promote the spread of new technologies to give women and girls the support that they need to become leaders in this field.'' TechGirls will complement the TechWomen program and echo its goals; this initiative champions two distinct but key themes of President Obama's June 2009 speech in Cairo by supporting development in the field of technology and enabling young women to reach their full potential in the technology industry. For additional background, visit: *http://exchanges.state.gov/programs/professionals/techwomen.html.*

The TechGirls program will bring approximately 25 teenage girls from select countries in the Middle East and North Africa to the United States for a three- to five-week exchange program in Summer 2012 focused on promoting high-level study of technology. The program should include participation in a technology camp, perhaps at a university, that will bring together the program participants with American peers who share similar interests. The camp should be academically rigorous and provide exposure to advanced tools in technology, as well as tools that can be readily adopted for use in the participants' home countries, through hands-on classes, labs, and individual or team-based projects.

The TechGirls program participants may be integrated into an existing camp or residential program, or one may be designed specifically for them. The camp should be complemented by additional activities designed specifically for the TechGirls to include mentoring experiences, job shadowing, mini-internships, and/or site visits to high tech companies in the United States. Participants should be afforded ample opportunity throughout the course of the program to engage in small group work to design and develop projects that are relevant to the field and will produce tangible, presentable outcomes, as well as to plan for follow-on activities. The program will be rounded out by planned social, recreational, and cultural activities; community service activities; home hospitality arrangements such as meals, recreational activities, or homestays with local families; and other activities designed to achieve the program's stated goals. Multiple opportunities for participants to interact meaningfully with their American peers must be included. Follow-on activities that are designed to reinforce and support the skills and linkages acquired during the U.S. program are an integral part of the program.

The Bureau anticipates that the TechGirls participants will be selected from the same countries that are participating in TechWomen so that TechWomen participants may assist with recruitment and mentoring of the girls once they return home. TechWomen participants are currently expected to be from Algeria, Egypt, Jordan, Lebanon, Morocco, Palestinian territories, Tunisia, and Yemen.

The goals of the program are to:

(1) Provide a program of academic study of applied technology for girls who already have a demonstrated aptitude and strong interest in the subject;

(2) Empower girls to pursue higher education and careers in technology;

(3) Link peers who share interests and abilities;

(4) Develop leadership skills of the participants;

(5) Promote mutual understanding among the peoples of the United States and the countries and territories of the Middle East and North Africa.

Using these goals and the theme of technology, applicant organizations should identify their own specific and measurable outputs and outcomes based on the project specifications provided in this solicitation. Proposals should indicate how recipients will achieve the short-term program objectives, and how these objectives will contribute to the achievement of the stated long-term goals.

Participants

U.S. Embassies in the participating countries will recruit, screen, and select the youth participants. Although the award recipient is not expected to be involved in participant selection, it may serve the posts in an advisory role, as needed. The youth participants will be high school girls, aged 15 to 17 years old who already have a demonstrated aptitude and strong interest in the field of technology. Participants will be proficient in the English language. The Bureau anticipates selecting two to five participants from each participating country or territory.

Participants will be provided with opportunities during the exchange program to interact with American peers who are of the same age and share similar interests in the field of technology. American peers will either be participants of an existing technology camp or will be recruited and selected by the award recipient if a technology camp is designed specifically for the TechGirls program.

Organizational Capacity

Applicant organizations must demonstrate their capacity for providing projects that address the goals and themes outlined in this document, and providing age-appropriate programming for youth, particularly from this region.

Applicants are strongly urged to garner private sector support. The Bureau encourages the expansion of the scope of this program beyond what it is able to fund. Private sector monies and in-kind offerings may be used, for instance, to fund additional visits to technology companies in the United States, to increase the number of American students that participate in exchange program activities, or to ramp up activities during the technology camp.

U.S. Embassy Involvement

U.S. Embassies in the participating countries will recruit, screen, and select the participants; facilitate visas; arrange and purchase international travel; arrange for adult accompaniment on the international flights; collaborate with the U.S. recipient organization in

providing pre-departure briefings and overseeing alumni follow-on activities; and engage TechWomen alumni in their home countries to serve as mentors to the TechGirls alumni.

Guidelines

The total amount of funding is $175,000, pending availability of funds. It is anticipated that the cooperative agreement will begin on or around March 15, 2012. The award period will be approximately 12 months, and will cover all aspects of the program planning, U.S.-based exchange activities, and support of follow-on activities in the participants' home countries.

Applicants should propose to host one group of approximately 25 participants. The U.S.-based exchange should take place during a three- to five-week period between June 15 and July 19, 2012, to coincide with the school calendars in the participating countries, and also to allow participants to complete the program and return home before Ramadan (estimated to begin on July 20, 2012). Applicants should propose specific exchange dates in their proposals, but the exact timing may be altered through the mutual agreement of the Department of State and the award recipient.

The Bureau reserves the right to reduce, revise, or increase proposal project configurations, budgets, and participant numbers in accordance with the needs of the program and the availability of funds. In addition, the Bureau reserves the right to adjust the participating countries should conditions change in a partner country or if other countries and/or regions are identified as Department priorities.

In pursuit of the goals outlined above, the award recipient will be responsible for the following:

(1) Providing U.S. Embassy Public Affairs staff in participating countries and territories with program materials and logistical information for preparation sessions at the pre-departure orientations.

(2) Managing logistical arrangements, including any domestic travel, ground transportation, accommodations, group meals, and disbursement of pocket money.

(3) Conducting an orientation for the TechGirls upon their arrival in the United States and for those participating from the U.S. host communities, including American peers and host families.

(4) Arranging housing for the participants in a dormitory, hotel, homestay, or some combination thereof and provide staff monitoring of the housing arrangement throughout the exchange. American host families must be properly screened and briefed, and criminal background checks must be conducted for all members of host families (and others living in the home) who are 18 years of age or older.

(5) Designing and planning three to five weeks of exchange activities, including a technology camp, that will provide a creative and substantive program aimed at developing the participants' knowledge and skill base in the field of technology. The exchange will include a short trip to Washington, DC

(6) Developing and implementing a plan to monitor the participants' safety and well-being while on the exchange, and to create opportunities for participants to share potential issues and resolve them promptly. The award recipient will be required to provide proper staff supervision and facilitation to ensure that the teenagers have a safe and pedagogically rich program. Staff, along with mentors will assist the youth with cultural adjustments, provide societal context to enhance learning, and counsel students as needed.

(7) Making proper arrangements for participants' religious observances.

(8) Facilitating, in coordination with the U.S. Embassies, continued engagement among the participants and offering opportunities to reinforce the ideas, values, and skills imparted during the exchange.

(9) Collaborating with U.S. Embassies to design and implement an evaluation plan that assesses the short- and medium-term impact of the project on the participants as well as on U.S. host and home communities.

Please Note: The ECA award for the TechGirls program will take the form of a cooperative agreement with the award recipient. In a cooperative agreement, the Department of State is substantially involved in program activities above and beyond routine grant monitoring. The Department's activities and responsibilities for the TechGirls program are as follows:

(1) Provide advice and assistance in the execution of all program components.

(2) Manage the recruitment and selection of the participants, arrange and purchase international travel, arrange for adult accompaniment on the international flights, and oversee pre- and post-exchange activities in each country.

(3) Issue DS–2019 forms and J–1 visas. All foreign participants will travel on a U.S. Government designation for the J Exchange Visitor Program.

(4) Provide the Accident and Sickness Program for Exchanges (ASPE) health benefits plan for foreign participants.

(5) Facilitate interaction within the Department of State, to include ECA, the regional bureau, and overseas embassies and consulates.

(6) Arrange meetings with Department of State officials in Washington, DC and the participating countries.

(7) Approve publicity materials and final calendar of exchange activities.

(8) Monitor and evaluate the program, through regular communication with the award recipient and possibly one or more site visits.

Additional Information

Award recipients will retain the name ''TechGirls'' to identify their project. All materials, publicity, and correspondence related to the program will acknowledge this as a program of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. The Bureau will retain copyright use of and be allowed to distribute materials related to this program as it sees fit.

The organization must inform the ECA Program Officer and participating U.S. Embassies of their progress at each stage of the project's implementation in a timely fashion, and will be required to obtain approval of any significant program changes in advance of their implementation.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major project activities, and applicants should explain and justify their programmatic choices. Projects must comply with J–1 visa regulations for the International Visitor category. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under Section I above.

Fiscal Year Funds: FY–2012.

Approximate Total Funding: Pending availability of funds, $175,000.

Approximate Number of Awards: One.

Anticipated Award Date: March 15, 2012.

Anticipated Project Completion Date: Approximately 12 months after start date, to be specified by applicant based on project plan.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(1) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making an award in an amount exceeding $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(2) Proposed sub-award recipients are also limited to grant funding of $60,000 or less if they do not have four years of experience in conducting international exchanges.

(3) The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(4) Organizations may submit only one proposal (total) under this competition. If more than one proposal is received from the same applicant, all submissions will be declared technically ineligible and will receive no further consideration in the review process.

Please Note: Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street NW., Washington, DC 20037, by telephone (202) 632–9261 or *Email: ShieldsSD@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–12–10 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Sarah Shields and refer to the Funding Opportunity Number ECA/PE/C/PY–12–10 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. All federal award recipients must maintain current registrations in the Central Contractor Registration (CCR) database. Recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. Recipients must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted. Failure to register in the CCR will render applicants ineligible to receive funding.

You must have nonprofit status with the IRS at the time of application.

Please Note: Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act

(FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street NW., Washington, DC 20037.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

(1) Participant satisfaction with the program and exchange experience.

(2) Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

(3) Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

(4) Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please Note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. Budget requests may not exceed $175,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package (POGI and PSI) for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: December 15, 2011.

Reference Number: ECA/PE/C/PY–12–10.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hardcopy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and six (6) copies of the application should be sent to:

Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–12–10, SA–5, Floor 4, Department of State, 2200 C Street NW., Washington, DC 20037.

With the submission of the proposal package, please also email the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word, Excel, and/or PDF, to *ShieldsSD@state.gov.* The Bureau may provide these files electronically to the Public Affairs Sections at the relevant U.S. Embassy for its review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support. *Contact Center Phone:* (800) 518–4726. *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time. *Email: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC, time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants

will receive a validation email from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) *Quality of the program idea:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative, age-appropriate, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should also include a plan to support participants' follow-on activities upon their return home.

(2) *Program planning and ability to achieve program objectives:* A detailed agenda and work plan should clearly demonstrate how project objectives will be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of exchange activities, such as workshops, presentations, and/or site visits, should be described in detail.

(3) *Support of diversity:* The proposal should demonstrate the applicant's commitment to promoting the awareness and understanding of diversity in both program administration (selection of participants, program venue, and program evaluation) and program content (orientation and debriefing sessions, and follow-on activities). Applicants should demonstrate readiness to accommodate participants with physical disabilities.

(4) *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record of successful implementation of similar programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(5) *Program evaluation:* The proposal should include a plan to evaluate the program's success in meeting its goals, both as the activities unfold and after they have been completed. The proposal should include a draft survey questionnaire or other technique, plus a description of a methodology to link outcomes to original project objectives.

(6) *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page

report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

(4) Quarterly or interim reports, as required in the Bureau cooperative agreement.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Sarah Shields, Youth Programs Division, ECA/PE/C/PY/T, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street NW., Washington, DC 20522–0503, by telephone (202) 632–9261 or email *ShieldsSD@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–12–10.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 27, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–28420 Filed 11–2–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7672]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Study of the U.S. Institutes for Women Student Leaders on Women's Leadership

Announcement Type: New Cooperative Agreements.

Funding Opportunity Number: ECA/A/E/USS–12–22–23.

Catalog of Federal Domestic Assistance Number: 19.009.

Key Dates: May to August, 2012.

Application Deadline: December 30, 2011.

Executive Summary

The Branch for the Study of the United States, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, invites proposal submissions from accredited U.S. colleges and universities for the design and implementation of two (2) Study of the United States Institutes for Women Student Leaders on Women's Leadership. Applicants may submit a proposal to administer one institute. The five week Institutes should take place in June and July, 2012.

Both Institutes should take place at U.S. academic institutions and provide groups of highly motivated female undergraduate students from the countries and regions noted below with in-depth seminars on Women's Leadership. Each Institute should include four weeks of academic residency followed by a one-week integrated educational travel tour that will expose participants to a different region of the United States. The one-week educational study tour should continue to examine the theme of women's leadership and should conclude with a three day session in Washington, DC. In order to take part in a joint closing conference, the participants should travel to Washington, DC no later than the evening of July 18, 2012.

Each Institute will host up to 20 participants, for a total of approximately 40 students. ECA plans to provide two awards (a maximum of one per applicant) for the administration of two Study of the U.S. Institutes and welcomes applications from accredited post-secondary education institutions in the United States (see Eligibility Information, section III). Women's colleges are especially encouraged to apply. The awarding of Cooperative Agreements for this program is contingent upon the availability of FY 2012 funds.

I. Funding Opportunity Description

I.1. Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

I.2. Purpose

The Study of the U.S. Institutes for Student Leaders are intensive academic programs whose purpose is to provide groups of foreign undergraduate students with a deeper understanding of the United States while also enhancing their leadership skills. The Institutes also expose Americans to the diverse cultures and traditions of the exchange participants.

The Institutes on Women's Leadership aim to provide undergraduate women leaders an introduction to women's leadership in the United States, while strengthening their leadership skills and heightening their awareness of U.S. and global women's issues. The Institutes should examine the history and evolution of U.S. society, culture, values, and institutions, with particular emphasis on women's roles throughout U.S. history. The Institutes should also incorporate a focus on contemporary American life and contemporary women, including the role of women in political, social, and economic issues and debates. The Institutes should address the influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, diversity, and

tolerance on the empowerment of women in the United States.

I.3. Overview

These two Study of the U.S. Institutes for Women Student Leaders on Women's Leadership will be implemented in the context of the ''Women in Public Service Project'' announced by Secretary of State Hillary Clinton in March, 2011. Secretary of State Clinton stated that this project would ''promote the next generation of women leaders who will invest in their countries and communities, provide leadership for their governments and societies, and help change the way global solutions are developed.'' The Women in Public Policy initiative aims to identify and empower a new generation of women to seek and attain leadership roles in democratic governments and civil society around the world. The Study of the U.S. Institutes for Women Student Leaders on Women's Leadership will support this initiative.

The Study of the U.S. Institute for Women Student Leaders on Women's Leadership should examine the history and participation of women in public life in the United States. The Institute should focus on two major areas: (1) Developing participants' leadership skills in areas such as critical thinking, communication, decision-making, and managerial abilities; and (2) placing these abilities in the context of the history and participation of women in U.S. politics, economics, culture, and society. The Institute should examine the historical domestic progress towards women's equality in the United States, the current domestic successes and challenges to women in a variety of fields, and current challenges in global women's issues.

In addition to promoting a better understanding of women's leadership in the United States, an important objective of the Institutes is to develop the participants' own leadership skills. In this context, the academic program should include group discussions, trainings, and exercises that focus on topics such as leadership, team and consensus building, networking, collective problem solving skills, effective communication and public speaking, and management skills. Institutes should include a community service component in which the participants experience firsthand how not-for-profit organizations and volunteerism play a key role in American civil society and offer unique opportunities for women's empowerment.

Local site visits and educational travel should provide opportunities to observe varied aspects of American life and to further explore the evolving roles of women in American society, especially the roles they play in local, state, and national government. The program should also include opportunities for participants to meet U.S. citizens from a variety of backgrounds, to interact with their American peers, and to meet with appropriate women student and civic groups to share information about their experiences and the role of women in their home countries.

The Institutes should begin on or around June 16, 2012 and conclude in Washington, DC with participants arriving in Washington, DC no later than the evening of July 18, 2012. Recipients should agree to collaborate with the Department of State and any other recipients to plan and implement a concluding conference in Washington, DC

I.4. Recipient(s)

ECA is seeking detailed proposals from U.S. colleges and universities. Applicants may apply to host one Institute. Women's colleges are especially encouraged to apply. See III.1 for eligibility requirements.

I.5. Participants

Participants will be identified and nominated by the U.S. Embassies and Consulates and/or Fulbright Commissions with final selection made by ECA. ECA will make the final decisions regarding participating countries. All of the participants in these programs will be female.

Participants in the Study of the U.S. Institutes for Women Student Leaders will be highly motivated undergraduate students from colleges, universities, and other institutions of higher education in selected countries overseas who demonstrate achievement and leadership through academic study, community involvement, and extracurricular activities. Their academic fields of study will be varied, and may include sciences, social sciences, arts and humanities, education, and business. All participants will have a good knowledge of English and will have demonstrated interest in leadership and women's empowerment.

Every effort will be made to recruit participants who are from non-elite or underprivileged backgrounds, are from both rural and urban areas, and have had little or no prior experience in the United States or elsewhere outside of their home country.

We anticipate that participants will be drawn from the following regions and countries:

(1) Sub-Saharan Africa (countries include Angola, Liberia, Mozambique, Sierra Leone, and South Sudan).

(2) North Africa/Middle East and East Asia (countries include Burma, Egypt, Libya, Mongolia, and Tunisia).

ECA reserves the right to adjust the regions and countries participating in these institutes based on Department priorities.

I.6. Program Guidelines

It is essential that proposals provide a detailed and comprehensive narrative describing the objectives of the Institute; the title, scope, and content of each session; planned site visits; and how each session relates to the overall Institute theme. Proposals must include a syllabus that indicates the subject matter for each lecture, panel discussion, group presentation, or other activity. The syllabus also should confirm or provisionally identify proposed speakers, trainers, and session leaders, and clearly show how assigned readings will advance the goals of each session. Overall, proposals will be reviewed on the basis of their responsiveness to RFGP criteria, coherence, clarity, and attention to detail. The accompanying Project Objectives, Goals, and Implementation (POGI) document provides program-specific guidelines that all proposals must address fully.

Please note: In a Cooperative Agreement, the Branch for the Study of the United States is substantially involved in program activities above and beyond routine grant monitoring. The Branch will assume responsibilities for the Institute as indicated in the Program Objectives, Goals, and Implementation (POGI) document. The Branch may request that the recipient(s) make modifications to the academic residency and/or educational travel components of the program. The recipient(s) will be required to obtain approval of significant program changes in advance of their implementation.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY 2012.

Approximate Total Funding: $480,000.

Approximate Number of Awards: Two.

Approximate Average Award: $240,000.

Ceiling of Award Range: $240,000.

Anticipated Award Date: Pending availability of funds, April 1, 2012.

Anticipated Project Completion Date: September 30, 2013.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, ECA may choose to renew this Cooperative Agreement for up to two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, ECA encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching.

In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) ECA grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in ECA funding. ECA anticipates making awards up to $240,000 per institute to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. ECA encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Technical Eligibility: It is ECA's intent to fund a total of two (2) Institutes as a result of this solicitation.

All applicants are strongly encouraged to read this RFGP thoroughly, prior to developing and submitting a proposal, to ensure that proposed activities are appropriate and responsive to the goals, objectives, and criteria outlined in the solicitation.

Total available funding is up to $240,000 per Institute for a total of $480,000. Applicant organizations are invited to submit one proposal to host only one Institute. Eligible applicants may not submit more than one proposal in this competition.

The proposal should clearly indicate the desired country group from Section I.5 above if appropriate and any regional expertise, if applicable. ECA reserves the right to alter or reassign the final country groupings.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, ECA staff may not discuss this competition with applicants until the proposal review process has been completed. If you have questions prior to the RFGP deadline, please address your questions to Elizabeth J. Latham, Program Officer in the Branch of the Study of the United States, at *LathamEJ@state.gov* or (202) 632–3338.

IV.1. Contact Information To Request an Application Package

Please contact the Branch for the Study of the United States, ECA/A/E/USS; SA–5, Fourth Floor; U.S. Department of State; Washington, DC 20037, (202) 632–3338 to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–12–22–23 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals, and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Elizabeth J. Latham and refer to the Funding Opportunity Number (ECA/A/E/USS–12–22–23) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from ECA's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–(866) 705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. All Federal award recipients and sub-recipients must maintain current registrations in the Central Contractor Registration (CCR) database and have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Recipients and sub-recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. All entities must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.

You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers,

trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

ECA will be responsible for the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, and issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street NW., Washington, DC 20037.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' ECA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. ECA recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. ECA expects that recipients will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipients will be required to provide reports analyzing their evaluation findings to ECA in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to ECA upon request.

IV.3e. Budget

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Budget requests for the institutes may not exceed $240,000 per institute, and administrative costs should be no more than $80,000 per institute.

IV.3e.2. Allowable costs for the program include the following:

(1) Institute staff salary and benefits;

(2) Participant housing and meals;

(3) Participant U.S. travel and per diem;

(4) Textbooks, educational materials, and admissions fees;

(5) Honoraria for guest speakers;

(6) Washington, DC closing conference expenses;

(7) Follow-on programming for alumni of Study of the United States programs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: December 30, 2011

Reference Number: ECA/A/E/USS–12–22–23

Methods of Submission: Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and six (6) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/E/USS–12–22–23, SA–5, Floor 4, Department of State, 2200 C Street NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* (800) 518–4726, *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time, *Email: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation email from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

ECA will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and ECA regulations and guidelines and forwarded to ECA grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department of State elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with ECA's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Plan and Ability to Achieve Program Objectives:* Proposals should exhibit originality, substance, precision, and relevance to ECA's mission. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Objectives should be reasonable, feasible, and flexible. Proposals should demonstrate clearly how the institution will meet the program's objectives and plan.

2. *Support for Diversity:* Proposals should demonstrate substantive support of ECA's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, presenters, and resource materials).

3. *Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. ECA recommends that the proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives.

4. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

5. *Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past ECA grants as determined by ECA Grants Staff. ECA will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the project's goals.

6. *Follow Up and Follow-on Activities:* Proposals should discuss provisions made for follow-up with returned participants as a means of establishing longer-term individual and institutional linkages. Proposals should also provide a plan for continued follow-on activity (without ECA support) ensuring that ECA supported programs are not isolated events.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal ECA procedures. Successful applicants will receive a Federal Assistance Award (FAA) from ECA's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient(s) and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:
http://www.whitehouse.gov/omb/grants
http://fa.statebuy.state.gov

VI.3. Reporting Requirements

You must provide ECA with the following mandatory reports:

(1) Interim program reports no more than 30 days after the conclusion of each institute;

(2) Quarterly financial reports;

(3) A final program and financial report no more than 90 days after the expiration of the award;

(4) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements;

(5) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to ECA in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to ECA upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Elizabeth J. Latham, U.S. Department of State, Study of the U.S. Branch, ECA/A/E/USS, SA–5, 4th floor, 2200 C Street NW., Washington, DC 20037, *LathamEJ@state.gov*, (202) 632–3338.

All correspondence with ECA concerning this RFGP should reference the above title and number ECA/A/E/USS–12–22–23.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, ECA staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any ECA representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 27, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–28426 Filed 11–2–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7676]

Culturally Significant Objects Imported for Exhibition Determinations: ''Shapeshifting: Transformations in Native American Art''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Shapeshifting: Transformations in Native American Art,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Peabody Essex Museum, Salem, MA, from on or about January 14, 2012, until on or about April 29, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 28, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–28622 Filed 11–2–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 17, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0172.

Date Filed: September 13, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 2011.

Description: Application of Nordic Global Airlines Oy d/b/a Nordic Global Airlines Ltd (''NGA'') requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable it to engage in foreign air transportation of property and mail between any point or points in the United States and any point or points outside the United States, and any other transportation authorized by additional rights made available to European Community carriers in the future. NGA further requests exemption authority to enable it to provide the services described above pending issuance of a foreign air carrier permit, and requests such additional or other relief as the Department may deem necessary or appropriate.

Docket Number: DOT–OST–2011–0174.

Date Filed: September 15, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 6, 2011.

Description: Application of JetBlue Airways Corporation (''JetBlue'') requesting a certificate of public convenience and necessity and requests the Department to designate JetBlue to the Colombian government authorizing

JetBlue to engage in foreign scheduled air transportation of persons, property and mail between Fort Lauderdale, Florida and Bogota, Colombia, utilizing 7 frequencies per week commencing on or about January 15, 2012.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–28493 Filed 11–2–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 10, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0169.

Date Filed: September 9, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 30, 2011.

Description: Application of Sun Air Express, LLC d/b/a Sun Air International requesting authority to operate scheduled passenger service as a commuter air carrier.

Docket Number: DOT–OST–2011–0171.

Date Filed: September 9, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 30, 2011.

Description: Application of Air Atlanta Icelandic (''AAI'') requesting the Department amend its foreign air carrier permit so that AAI can exercise new rights recently made available to Icelandic air carriers pursuant to the Air Transport Agreement between the United States of America and the European Union and its Member States and Iceland and Norway. AAI also requests an exemption to the extent necessary to enable it to provide the services covered by this application while AAI's request for an amended foreign air carrier permit is pending.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–28496 Filed 11–2–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 15, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0190.

Date Filed: October 12, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 2, 2011.

Description: Application of Laser Airlines, C.A. (''Laser'') requesting an exemption and a foreign air carrier permit authorizing Laser to provide: (i) Scheduled foreign air transportation of persons, property and mail between Caracas, Venezuela (''CCS''), on the one hand, and Fort Lauderdale, Florida (''FLL''), on the other hand; and (ii) charter foreign air transportation of persons, property and mail between Maiquetia (''MIQ''), Valencia (''VLN'') and Margarita Island (''PMV''), Venezuela, on the one hand, and FLL, on the other hand, and other charter flights.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–28491 Filed 11–2–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 10, 2011

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2011–0167.

Date Filed: September 6, 2011.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Mail Vote 690 Resolution 024d Currency Names, Codes, Rounding Units and Acceptability of Currencies—Kyrgyzstan (Memo PTC COMP 1647). *Intended Effective Date:* 1 November 2011.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–28484 Filed 11–2–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Letters of Interest for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of funding availability.

SUMMARY: The DOT's TIFIA Joint Program Office (JPO) announces the availability of a limited amount of funding in Fiscal Year (FY) 2012 to provide credit assistance. Under TIFIA, the DOT provides secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects of regional or national significance. Projects must meet statutorily specified criteria to be selected for credit assistance.

Because demand for the TIFIA program exceeds budgetary resources, the DOT is utilizing periodic fixed-date solicitations. This notice outlines the

process that project sponsors must follow to compete to secure an invitation for Federal credit assistance for Federal FY 2012.

DATES: For consideration in the FY 2012 funding cycle, Letters of Interest must be submitted by 4:30 p.m. EST on December 30, 2011, using the revised form on the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm*. Project sponsors that have previously submitted Letters of Interest for a prior fiscal year's funding must resubmit them to be considered for funding in FY 2012, as outlined below.

ADDRESSES: Submit all Letters of Interest to the attention of Mr. Duane Callender via email at: *TIFIACredit@dot.gov*. Submitters should receive a confirmation email, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via email, as provided above, shall be deemed properly filed.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact Duane Callender via email at *TIFIACredit@dot.gov* or via telephone at (202) 366–9644. A TDD is available at (202) 366–7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/*.

SUPPLEMENTARY INFORMATION:

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I. Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat.107, 241, (as amended by sections 1601–02 of Pub. L. 109–59) established the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the U.S. Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. The TIFIA regulations (49 CFR part 80) provide specific guidance on the program requirements.[1] On January 5, 2001, at 65 FR 2827, the Secretary of Transportation (Secretary) delegated to the Administrator of the Federal Highway Administration (FHWA) the authority to act as the Executive Agent for the TIFIA program (49 CFR 1.48(b)(6)). The TIFIA JPO, a component of the FHWA Office of Innovative Program Delivery, has responsibility for coordinating program implementation.

II. Program Funding

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), which made a number of amendments to TIFIA including lowering the estimated project cost thresholds and expanding eligibility for TIFIA credit assistance. SAFETEA–LU authorized $122 million annually from the Highway Trust Fund (HTF) for Fiscal Years (FY) 2005 to 2009 in TIFIA budget authority to pay the subsidy cost of credit assistance. As of the publication date of this notice, extensions of the surface transportation reauthorization act have been enacted continuing highway programs that were authorized through FY 2009, and the expectation is that Congress will reauthorize an equivalent amount of budget authority for the TIFIA program in FY 2012. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years. The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like all funds subject to the annual Federal-aid obligation ceiling, the amount of TIFIA budget authority available in a given year may be less than the amount authorized for that fiscal year.

After reductions for administrative expenses and application of the annual obligation limitation, TIFIA has approximately $110 million available annually to provide credit subsidy support to projects. Although dependent on the individual risk profile of each loan, collectively, this budget authority could support approximately $1.1 billion in annual lending capacity.

III. Eligible Projects

Highway, passenger rail, transit, intermodal projects, and intelligent transportation systems may receive credit assistance under TIFIA. Additionally, SAFETEA–LU expanded eligibility to private rail facilities providing public benefit to highway users, and surface transportation infrastructure modifications necessary to facilitate direct intermodal transfer and access into and out of a port terminal. See the definition of ''project'' in 23 U.S.C. 601(a)(8) and Chapter 3 of the TIFIA Program Guide for a description of eligible projects. (*http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm).*

IV. Types of Credit Assistance

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees. These types of credit assistance are defined in 23 U.S.C. 601 and 49 CFR 80.3. The TIFIA credit facility, which must be senior or parity lien in the event of bankruptcy, liquidation or insolvency, can be subordinate as to cash flows absent such an event. The maximum amount of TIFIA credit assistance to a project is limited to 33 percent of eligible project costs. Applicants may not include any of the fees assessed by TIFIA, or costs related to the application process (such as charges associated with obtaining the required preliminary rating opinion letter referenced in section V), among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

V. Estimated Project Cost Threshold Requirements

Projects seeking TIFIA assistance must meet certain statutory threshold requirements. Generally, the minimum size for TIFIA projects is $50 million of eligible project costs; however, the minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is $15 million. Each project seeking TIFIA assistance must apply to the DOT, and must satisfy the applicable State and local transportation planning requirements. Each application must identify a dedicated revenue source to repay the TIFIA loan, and each private applicant must receive public approval for its project as demonstrated by satisfaction of the applicable planning and programming requirements. These eligibility requirements are detailed in 23 USC 602(a) and Chapter 3 of the TIFIA Program Guide (*http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm).*

VI. Letters of Interest and Applications

Because the demand for credit assistance exceeds budgetary resources, the DOT is utilizing periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the TIFIA program statute, regulation, and objectives.

[1] The TIFIA regulations have not been updated to reflect changes enacted in Public Law 109–59, SAFETEA–LU. Where the statute and the regulation conflict, the statute takes precedence. See the TIFIA Program Guide for updated program information.

Project sponsors seeking TIFIA credit assistance for FY 2012 must submit a Letter of Interest describing the project fundamentals and addressing the TIFIA selection criteria. For consideration in the FY 2012 funding cycle, Letters of Interest must be submitted by 4:30 p.m. EST, via email at: *TIFIACredit@dot.gov* on December 30, 2011, using the revised form on the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm*. Project sponsors that have previously submitted Letters of Interest for a prior fiscal year's funding must resubmit them using the FY 2012 form. For the purpose of completing its evaluation, the TIFIA JPO staff may contact an applicant regarding specific information in the Letter of Interest.

A public agency that seeks access to TIFIA on behalf of multiple competitors for a project concession must submit the project's Letter of Interest. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

After concluding its review of the Letters of Interest, the DOT will invite complete applications (including the preliminary rating opinion letter and detailed plan of finance). Letters of Interest submitted pursuant to this notice of funding availability do not need to include a preliminary rating opinion letter. However, projects invited to submit applications will be required to obtain a preliminary rating opinion letter. The senior debt obligations for each project receiving TIFIA credit assistance must obtain an investment grade rating from at least one nationally recognized credit rating agency, as defined in 23 U.S.C. 601(a)(10) and 49 CFR 80.3. If the TIFIA credit instrument is proposed as the senior debt, then it must receive the investment grade rating.

To demonstrate this potential, each application must include a preliminary rating opinion letter from a credit rating agency that addresses the creditworthiness of the senior debt obligations funding the project and concludes that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. The rating opinion letter should also provide an opinion on the default risk for the TIFIA instrument and indicative ratings for both the senior debt obligations and the TIFIA credit instrument. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance. More detailed information about these TIFIA credit opinions and ratings may be found in the Program Guide on the TIFIA Web site at: *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm.*

An invitation to apply for credit assistance does not guarantee DOT's approval, which will remain subject to evaluation based on TIFIA's statutory credit standards and the successful negotiation of all terms and conditions.

There is no fee to submit a Letter of Interest. For projects that are invited to apply, fees are charged to cover the cost of financial and legal advisory services. Additional fees will be charged after the loan is executed. More detailed information about these fees can be found in Chapter 4 of the TIFIA Program Guide: *http://www.fhwa.dot.gov/ipd/pdfs/tifia/tifia_program_guide_072511.pdf.*

VII. Selection Criteria

The eight TIFIA selection criteria are described in statute at 23 U.S.C. 602(b) and are assigned relative weights via regulation at 49 CFR 80.15. The criteria are restated below with clarifying language (where appropriate). The DOT may give priority to projects that enhance the TIFIA portfolio's geographic diversity and have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. In addition, DOT may consider the project's readiness and timeline to proceed to financial close on the TIFIA instrument. With respect to selection criteria that have multiple components, a project need not be well aligned with each of the components in order to be successful in that criterion overall. However, projects that are strongly aligned with multiple components will be the most successful in those criteria. Furthermore, a project that has a negative effect on safety or environmental sustainability will need to demonstrate significant merits in other components in order to be selected for funding. Listed in order of relative weight, the TIFIA selection criteria are as follows:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system. This includes consideration of livability: providing transportation options that are linked with housing and commercial development to improve the economic opportunities and quality of life for people in communities across the U.S.; economic competitiveness: contributing to the economic competitiveness of the U.S. by improving the long-term efficiency and reliability in the movement of people and goods; and safety: improving the safety of U.S. transportation facilities and systems and the communities and populations they impact. *Relative weight:* 20 percent.

(ii) The extent to which TIFIA assistance would foster innovative public-private partnerships and attract private debt or equity investment. *Relative weight:* 20 percent.

(iii) The extent to which the project helps maintain or protect the environment. This includes sustainability: improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions, and reducing other transportation-related impacts on ecosystems; including the use of tolling or pricing structures to reduce or manage high levels of congestion on highway facilities and encourage the use of alternative transportation options; and state of good repair: improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials. *Relative weight:* 20 percent.

(iv) The creditworthiness of the project. This includes a demonstrated capacity to repay the Federal credit assistance as well as a determination that the project has appropriate security features such as proper coverage ratios, rate covenants, and reserves, as applicable. *Relative weight:* 12.5 percent.

(v) The likelihood that TIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed. For purposes of this criterion, project sponsors should demonstrate that traditional sources of financing are not available at feasible rates, or that the costs of traditional financing would constrain their ability to deliver the project, or that delivery of this project through traditional financing approaches would constrain their ability to deliver additional components of their capital programs. *Relative weight:* 12.5 percent.

(vi) The extent to which the project uses new technologies, including intelligent transportation systems, to enhance the efficiency of the project. *Relative weight:* 5 percent.

(vii) The amount of budget authority required to fund the Federal credit instrument made available under TIFIA. *Relative weight:* 5 percent.

(viii) The extent to which TIFIA assistance would reduce the contribution of Federal grant assistance

to the project. *Relative weight:* 5 percent.

Authority: 23 U.S.C. 601–609; 49 CFR 1.48(b)(6); 23 CFR part 180; 49 CFR part 80; 49 CFR part 261; 49 CFR part 640.

Issued on: October 31, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–28584 Filed 11–2–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0055]

Notice of Public Hearing

The Marquette Rail, LLC (MQT), by a May 23, 2011, document, has petitioned the Federal Railroad Administration (FRA) seeking the approval of a Product Safety Plan for the Railsoft TrackAccess System submitted pursuant to Title 49 Code of Federal Regulations (CFR) Section 236.907. The TrackAccess System is a processor-based dispatch system developed to be operated in the autonomous mode (without dispatcher intervention) for low-density lines.

This proceeding is identified as Docket Number FRA–2011–0055. A copy of MQT's full petition is available for review online at *http://www.regulations.gov.*

FRA has conducted a field investigation in this matter and has issued a public notice seeking comments from interested parties (*See* 76 FR 48941 (August 9, 2011)). After examining the carrier's proposal and the available facts, and comments received from American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Maintenance of Way Employees Division; Brotherhood of Railroad Signalmen; and Railsoft Systems, Inc., FRA has determined that a public hearing is necessary before a final decision is made on this proposal. Accordingly, FRA invites all interested persons to participate in a public hearing on December 13, 2011. The hearing will be conducted at the Holiday Inn Express, 5323 West U.S. Highway 10, Ludington, Michigan 49431. The hearing will begin at 9 a.m. Interested parties are invited to present oral statements at the hearing. For information on facilities or services for persons with disabilities or to request special assistance at the hearing, contact FRA's Docket Clerk, Jerome Melis-Tull, by telephone, email, or in writing, at least 5 business days before the date of the hearing. Mr. Melis-Tull's contact information is as follows: FRA, Office of Chief Counsel, Mail Stop 10, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone: (202) 493–6058; email: *Jerome.Melis-Tull@dot.gov.*

The hearing will be informal and conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25) by a representative designated by FRA. The hearing will be a non-adversarial proceeding; therefore, there will be no cross-examination of persons presenting statements. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on October 28, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–28453 Filed 11–2–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

U.S. Maritime Administration

[Docket No. MARAD 2011–0141]

Availability of Finding of No Significant Impact

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Maritime Administration, of the U.S. Department of Transportation (US DOT), has made available to interested parties the Finding of No Significant Impact (FONSI) for the United States Merchant Marine Academy Mallory Pier Replacement project. An environmental assessment (EA) and FONSI have been prepared pursuant to the National Environmental Policy Act (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508). The purpose of the EA is to evaluate the potential environmental impacts from replacement of a 600 foot section of timber pile supported pier with concrete pile supports and decking. The timber pile pier section to be replaced comprises a total area of 13,400 square feet.

FOR FURTHER INFORMATION CONTACT: Daniel E. Yuska Jr., 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–0714; or email: *Daniel.yuska@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-(800) 877–8339 to contact the above individuals during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

A copy of the Final EA and Finding of No Significant Impact can be obtained or viewed online at *http://www.regulations.gov.* The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from *http://www.adobe.com/prodindex/acrobat/readstep.html.*

By Order of the Maritime Administrator.

Dated: October 26, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–28401 Filed 11–2–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Chrysler

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Chrysler LLC, (Chrysler) petition for exemption of the Chrysler [confidential] vehicle line in accordance with 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard.* Chrysler requested confidential treatment for specific information in its petition. The agency granted Chrysler's request for confidential treatment by letter dated September 14, 2011. Chrysler informed the agency that the nameplate and

model year of introduction will be released to the public prior to introduction of the vehicle line.

DATES: The exemption granted by this notice is effective beginning with the [confidential] Model Year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–443, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated July 5, 2011, Chrysler requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the MY [confidential] Chrysler [confidential] vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Chrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the [confidential] vehicle line. Chrysler will install the Sentry Key Immobilizer System (SKIS) antitheft device as standard equipment on the vehicle line. The SKIS provides passive vehicle protection by preventing the engine from operating unless a valid electronically encoded key is detected in the ignition system of the vehicles. The major components of the SKIS device consist of the Radio Frequency Hub Module (RFHM), Ignition Node Module (IGNM), Engine Control Module (ECM), Body Controller Module (BCM), Sentry Key Immobilizer Module (SKIM), transponder key that performs the immobilizer function and the Instrument Panel Cluster (IPC) which contains the telltale function only. According to Chrysler, all of these components work collectively to perform the immobilizer function. Chrysler stated that its [confidential] vehicle line will also be available with an optional visible or audible alarm system to provide an indication of unauthorized vehicle entry (i.e., flashing lights or horn alarm).

According to Chrysler, the immobilizer feature is activated when the key is removed from the ignition system, whether the doors are open or not. Only a valid key inserted into the ignition system will allow the vehicle to start and continue to run.

Chrysler stated that the functions and features of the Sentry Key Immobilizer Module (SKIM) are all integral to the RFHM. The SKIM performs the interrogation with the transponder in the key. The RFHM receives LF and/or RF signals from the Sentry Key transponder which is integral to the FOBIK. The RFHM contains a radio frequency (RF) transceiver, a microprocessor and serves as the Remote Keyless Entry RF receiver. The RFHM also acts as a receiver if the vehicle is equipped with a Tire Pressure Monitoring system.

The RFHM is paired with the IGNM that contains either a rotary ignition switch (keyed vehicles) or a START/STOP push button (keyless vehicles). According to Chrysler, the SKIS will be placed on both its keyless entry vehicles and keyed vehicles. For the keyed vehicles, the IGNM transmits an LF signal to excite the transponder in the key when the ignition switch is turned to the ON position. The IGNM waits for a signal response from the transponder and transmits the response to the RFHM. If the response identifies the transponder key as invalid or if no response is received from the transponder key, Chrysler stated that the RFHM sends an invalid key message to the ECM, which will disable engine operation and immobilize the vehicle after two seconds of running. This process is also similar for the keyless vehicles. Chrysler stated that when the keyless START/STOP button is pressed, the RFHM transmits a signal to the transponder key through LF antennas to the RFHM. The RFHM waits for a signal from the transponder. If the response from the transponder identifies the transponder key as invalid or the transponder key is not within the car's interior, the engine will be disabled and the vehicle will be immobilized after two seconds of running.

To avoid any perceived delay when starting the vehicle with a valid transponder key and to prevent unburned fuel from entering the exhaust, Chrysler stated that the engine is permitted to run for no more than two seconds if an invalid transponder key is used. Chrysler stated that only six consecutive invalid vehicle start attempts are permitted and all other attempts are locked out by preventing the fuel injectors from firing and disabling the starter.

Chrysler stated that each ignition key used in the SKIS has an integral transponder chip included on the circuit board beneath the cover of the integral Remote Keyless Entry (RKE) transmitter. Each transponder key has a unique transponder identification code that is permanently programmed into it by the manufacturer which must be programmed into the RFHM to be recognized by the SKIS as a valid key. Chrysler stated that once a Sentry Key has been programmed to a particular vehicle, it cannot be used on any other vehicle.

In addressing the specific content requirements of 49 CFR part 543.6, Chrysler provided information on the reliability and durability of the device. Chrysler conducted tests based on its own specified standards and stated its belief that the device meets the stringent performance standards prescribed. Specifically, Chrysler stated that its device must demonstrate a minimum of 95 percent reliability with 90 percent confidence. In addition to the design and production validation test criteria, Chrysler stated that the SKIS device also undergoes a daily short term durability test and all of its systems undergo a series of three functional tests for durability prior to being shipped from the supplier to the vehicle assembly plant for installation in its vehicles.

Chrysler stated that its vehicles are also equipped with a security indicator that acts as a diagnostic indicator. Chrysler stated that if the RFHM detects an invalid transponder key or if a transponder key related fault exists, the security indicator will flash. If the RFHM detects a system malfunction or the SKIS has become ineffective, the security indicator will stay on. If the vehicle is equipped with a Customer Learn transponder programming feature, the security indicator will flash whenever Customer Learn programming is in use.

Chrysler stated that it expects the [confidential] vehicle line to mirror the lower theft rate results achieved by the Jeep Grand Cherokee vehicle line when ignition immobilizer systems were included as standard equipment on the line. Chrysler stated that it has offered the SKIS immobilizer system as standard equipment on all Jeep Grand Cherokee vehicles since the 1999 model year. Chrysler indicated that the average theft rate, based on NHTSA's theft data, for the Jeep Grand Cherokee vehicles for the four model years prior to 1999 (1995–1998), when a vehicle immobilizer system was not installed as standard equipment, was 5.3113 per one thousand vehicles produced, significantly higher than the 1990/1991 median theft rate of 3.5826. However, the average theft rate for the nine model years (1999–2008, no data available for 2007) after installation of the standard immobilizer device was 2.4734, which

is significantly lower than the median. The Jeep Grand Cherokee vehicle line was granted an exemption from the parts-marking requirements beginning with MY 2004. Chrysler further stated that NHTSA's theft data for the Jeep Grand Cherokee indicates that the inclusion of a standard immobilizer system resulted in a 52 percent net average reduction in vehicle thefts.

Pursuant to 49 U.S.C. 33106 and 49 CFR part 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Chrysler has provided adequate reasons for its belief that the antitheft device for the vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Chrysler provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in 49 CFR Part 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Chrysler's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2013 model year vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Chrysler decides not to use the exemption for this vehicle line, it must formally notify the agency. If such a decision is made, the vehicle line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Chrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. 49 CFR part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, 49 CFR part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that 49 CFR part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: October 27, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–28541 Filed 11–2–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Final Action Under Paperwork Reduction Act

AGENCY: Surface Transportation Board, DOT.

ACTION: OMB Extension of Approval of Information Collection.

SUMMARY: Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.10, the Surface Transportation Board has obtained an extension of OMB's approval for the information collection, required under 49 CFR 1114.30(d), 1121.3(d), 1150.33(h), 1150.43(h), and 1180.4(g)(4), of certain agreements that contains rail interchange commitments (OMB Control Number 2140–0016).

Unless renewed, OMB approval expires on August 31, 2014. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.8, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: October 28, 2011.

Jeffrey Herzig,

Clearance Clerk.

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50 CFR Part 92

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2012 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2011–0090; 91200–1231–9BPP–L2]

RIN 1018–AX55

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2012 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes migratory bird subsistence harvest regulations in Alaska for the 2012 season. These regulations will enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that go into effect on April 2, 2012, and expire on August 31, 2012.

DATES: We will accept comments received or postmarked on or before January 3, 2012. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 19, 2011.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–MB–2011–0090.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R7–MB–2011–0090; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comment Procedures section below for more information).

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the Web site. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on *http://www.regulations.gov*.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov*. Search for FWS–R7–MB–2011–0090, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 4501 N. Fairfax Drive Room 4107, Arlington, VA 22203–1610.

Public Availability of Comments

As stated above in more detail, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2012. This rule proposes a list of migratory bird season openings and closures in Alaska by region.

How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, was originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on March 29, 2011 (76 FR 17353).

Recent **Federal Register** documents, which are all final rules setting forth the annual harvest regulations, are available at *http://alaska.fws.gov/ambcc/regulations.htm* or by contacting one of the people listed under **FOR FURTHER INFORMATION CONTACT**.

What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?

The U.S. Fish and Wildlife Service (Service or we) proposes to establish migratory bird subsistence harvest regulations in Alaska for the 2012 season. These regulations will enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process

involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2012 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 8, 2011 (76 FR 19876). While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2012 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 8, 2011, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in June 2011 to develop recommendations for changes that would take effect during the 2012 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee at the committee's meeting on July 27 and 28, 2011.

Who is eligible to hunt under these regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. High populated areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459, based on the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

What is different in the region-specific regulations for 2012?

Regulations proposed in this rule are identical to those for the 2011 harvest season. However, at the June 2, 2011 Co-Management Council meeting, the Yukon/Kuskokwim Delta and Kodiak Archipelago regional representatives requested to remove their respective regions from 2012 regulations by not approving the consent agenda. Annually, the migratory bird subsistence season in Alaska is closed until regulations are passed that open the upcoming season. If regulations do not change from year to year, the 11 Alaska regions opt to vote a consent agenda whereby regulations from the previous year (2011) are accepted for the following year (2012).

The justification provided at the Co-Management Council Meeting by the Yukon/Kuskokwim Delta representative was that the region could not support regulations that included the duck stamp requirement. The representative indicated that there was a conflict in the application of other federal requirements to the Alaska Migratory Bird Co-Management Council (AMBCC) regulations and that the Federal Government does not take into consideration other Native laws that could apply to the regulatory program. The representative also indicated that there is widespread opposition to the Federal duck stamp requirement and that he does not support any regulation requiring the Federal duck stamp to hunt waterfowl.

The justification provided by the Kodiak Archipelago Representative was that the Kodiak Island representative expressed concerns that he was not familiar with the AMBCC process and was not familiar with the history of the regional regulations. In discussions with local elders he indicated that they are not supportive of the closure areas or dates and could not support them. He indicated that there is egg gathering in the Kodiak Island region and that was another reason why he could not support a closure that would stop that activity.

After the Co-Management Council meeting, the Alaska Regional Director and his staff contacted both regional representatives to inform them that the Service Regulations Committee would have to implement regulations to provide harvest opportunities for subsistence users who take migratory birds in those areas and elsewhere. The Service Regulations Committee met on July 28, 2011, and does not support the lack of subsistence regulations in the Yukon-Kuskokwim and Kodiak Archipelago Regions. Therefore, the Service is proposing to continue the 2011 regulations for those two regions through the 2012 season without change. Justification to propose these regulations was to provide a continuity of the regulations affecting subsistence harvesters in those areas.

How will the service ensure that the subsistence harvest will not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?

We have monitored subsistence harvest for the past 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Spectacled and Steller's Eiders

Spectacled eiders *(Somateria fischeri)* and the Alaska-breeding population of Steller's eiders *(Polysticta stelleri)* are listed as threatened species; their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual goals and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals continue to be challenging, they are not irreconcilable, providing sufficient recognition is given to the need to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual goals in mind, the Service, working with partners, developed measures in 2009 to further reduce the potential for shooting

mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect Steller's eider mortality.

This proposed rule continues to focus on the North Slope from Barrow through Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These proposed regulations were designed to address several ongoing eider management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any bird closed to harvest. This proposal also describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. We are willing to discuss many of the proposed regulations with our partners on the North Slope to ensure the proposed regulations protect closed species as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The proposed regulations pertaining to bag checks and possession of illegal birds are deemed necessary to verify compliance with not harvesting protected eider species.

The Service is aware and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. We also recognize that no listed eiders have been documented shot in the last 3 years, even with the first significant breeding season for Steller's eiders occurring in the Barrow area this past summer. The Service acknowledges progress made with the other eider conservation measures including partnering with the North Slope Migratory Bird Task Force for increased waterfowl hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. Our primary strategy to reduce the threat of shooting mortality of threatened eiders is to continue working with North Slope partners to conduct education, outreach, and harvest monitoring. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs (50 CFR 92.21 and proposed 50 CFR 92.32).

In-season harvest monitoring information will be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. During 2009 through 2011, no Steller's eider harvest was reported on the North Slope, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. Based on these successes, the 2011 conservation measures will also be continued, although there will be some modification of the amount of effort and emphasis each will receive. Specifically, local communities have continued to develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and based on last year's observations, local hunters have demonstrated greater compliance with hunting regulations.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the proposed regulation at 50 CFR 92.32, carried over from the past 2 years, would clarify that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Yellow-Billed Loon and Kittlitz's Murrelet

Yellow-billed loon (*Gavia adamsii*) and Kittlitz's murrelet (*Brachyramphus brevirostris)* are candidate species for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Both species are closed to hunting, and there is no evidence Kittlitz's murrelets are harvested. On the other hand, harvest surveys have indicated that harvest of yellow-billed loons on the North Slope and St. Lawrence Island does occur. Most of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service will continue outreach efforts in both areas in 2012, engaging partners to improve harvest estimates and decrease take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this rule proposes to continue through 2012 the provisions originally established in 2005 to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important to the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be kept if found entangled in fishing nets in 2012 under this proposed provision. This proposed provision does not authorize intentional harvest of yellow-billed loons, but would allow use of those loons inadvertently entangled during normal subsistence fishing activities.

In 2010, the Service Regulations Committee continued support of this proposal was contingent on the North Slope Borough collaborating with the Service and the Co-Management Council to design and implement in 2011 a scientifically defensible survey to estimate the number of yellow-billed loons entangled in subsistence fishing nets. During June 2011, the North Slope submitted a proposal entitled ''Assessment of Yellow-Billed Loons Inadvertently Entangled in Subsistence Fishing Nets in the North Slope Borough'' that has been endorsed by the Alaska Department of Fish and Game and the Service. The Service Regulations Committee met on July 28, 2011, and appreciated the efforts by the North Slope Borough to develop a scientifically defensible yellow-billed loon entanglement survey and therefore supported the proposed continuation of the provision to allow subsistence use of up to 20 yellow-billed loons inadvertently caught in subsistence fishing nets.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to ''review other programs administered by him and utilize such programs in furtherance of the purposes of the Act'' and to ''insure that any action authorized, funded, or carried out * * * is not likely to

jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Prior to issuance of annual spring and summer subsistence regulations, we will consult under section 7 of the Endangered Species Act of 1973, as amended (Act), to ensure that the 2012 subsistence harvest is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats, and that the regulations are consistent with conservation programs for those species. Consultation under section 7 of the Act for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the section 7 consultation is a public document available from either person listed under **FOR FURTHER INFORMATION CONTACT**.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The proposed rule would legalize a pre-existing subsistence activity, and the resources harvested would be consumed by the harvesters or persons within their local community.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more. It proposes to legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this proposed rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this proposed rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this proposed rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a Notice of Decision (65 FR 16405; March 28, 2000), we identified 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When

funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this proposed rule does not have significant takings implications. This proposed rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this proposed rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these proposed regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this proposed rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

In keeping with the spirit of the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They will develop recommendations for among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education program, research and use of traditional knowledge, and habitat protection. The management bodies will involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

This proposed rule would legally recognize the subsistence harvest of migratory birds and their eggs for indigenous inhabitants including tribal members. In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement of subsistence users. We began by publishing in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). We held meetings with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) a Notice of Decision entitled, ''Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds.'' This notice described the way in which management bodies would be established and organized. Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the modules. The decision established one Statewide management body consisting of 1 Federal member, 1 State member, and 7 to 12 Alaska Native members, with all components serving as equals.

In the development of this proposed rule, the Service has adopted a policy to involve Alaska tribes in the consultation process to the extent possible. Alaska is home to more than 230 federally recognized tribes. The majority of tribes are located in rural Alaska which has no road access. Accessibility is limited to air transportation, which is cost prohibitive to conduct face-to-face consultation, especially with over 200 tribes. An important factor to consider is that consulting with tribes prior to the publication of migratory bird subsistence harvest regulations limits our options dramatically. Because of this time constraint, the Service has determined that consultation will be conducted via teleconference. Annually, prior to the publication of a proposed rule, the AMBCC will send out letters to each federally recognized tribe soliciting their input as to whether or not they would like to consult with the Service on upcoming subsistence harvest regulations. The letter will include a request for: (1) Name of the tribe, (2) list of tribal representatives involved in the consultation, (3) contact numbers of the tribal office, and (4) preferred date and time for consultation. The Service is confident that the proposed rule process, which includes a 60-day comment period and the opportunities for tribes to be involved in the rulemaking process through consultation, increases tribal involvement immensely.

Paperwork Reduction Act

This proposed rule has been examined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and does not contain any new collections of information that require Office of Management and Budget approval. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires April 30, 2013. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.) Consideration

The annual regulations and options were considered in the environmental assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2012 Spring/Summer Harvest,'' October 25, 2011. Copies are available from either the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this proposed rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart D—Annual Regulations Governing Subsistence Harvest

2. Amend subpart D by adding § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2012 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.*

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.*

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) *Bristol Bay Region.*

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region.*

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region,* except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region.*

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region.*

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ W and south of the latitude line 70°45′ N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ W and north of the latitude line 70°45′ N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: Yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region may be inadvertently entangled in subsistence fishing nets in the North Slope Region and kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.*

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.*

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only):

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier:

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR 100.3(a)):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay):

(i) Season: Glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

3. Amend subpart D by adding § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders *(Polysticta stelleri),* the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: October 17, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–28556 Filed 11–2–11; 8:45 am]

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Part III

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8742 of October 31, 2011

To Modify the Harmonized Tariff Schedule of the United States

By the President of the United States of America

A Proclamation

1. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (19 U.S.C. 3005(a)) directs the United States International Trade Commission (the ''Commission'') to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and periodically to recommend to the President such modifications to the HTS as the Commission considers necessary or appropriate to accomplish the purposes set forth in that subsection. Among those purposes are to promote the uniform application of the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'') and to alleviate unnecessary administrative burdens.

2. The Commission conducted an investigation pursuant to section 1205 of the 1988 Act (Investigation No. 1205–8) in response to a request from the Department of the Treasury regarding certain footwear featuring outer soles of rubber or plastic to which a layer of textile material has been added. The request stated that changes to the HTS would promote the uniform application of the Convention as well as alleviate unnecessary administrative burdens.

3. On August 9, 2010, the Commission issued a report in Investigation No. 1205–8, recommending certain changes to the HTS. The report and layover requirements of section 1206(b) of the 1988 Act (19 U.S.C. 3006(b)) were satisfied as of March 30, 2011.

4. On November 8, 2010, the United States Trade Representative (the ''USTR'') requested that the Commission make further recommendations consistent with section 1205(d) of the 1988 Act concerning particular provisions of the HTS that the Commission had recommended in its August report be replaced by new tariff lines. The USTR also asked the Commission to consider whether, in response to requests made by interested parties in the course of the original investigation, additional tariff lines should be inserted in the HTS.

5. On February 18, 2011, the Commission issued an addendum to its report, recommending additional modifications to the HTS. The report and layover requirements of section 1206(b) were satisfied as of June 30, 2011.

6. Section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS based on recommendations made by the Commission pursuant to section 1205 of the 1988 Act, if he determines that the modifications are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States. I have determined that the modifications to the HTS set forth in Annex I to this proclamation are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States.

7. On June 6, 2003, the United States and Chile entered into the United States-Chile Free Trade Agreement (USCFTA). The Congress approved the

USCFTA in section 101(a) of the United States-Chile Free Trade Agreement Implementation Act (the ''USCFTA Act'') (19 U.S.C. 3805 note). Presidential Proclamation 7746 of December 30, 2003, implemented the USCFTA with respect to the United States, and incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the USCFTA.

8. Section 202 of the USCFTA Act provides rules for determining whether goods imported into the United States originate in the territory of a USCFTA Party and thus are eligible for the tariff and other treatment contemplated under the USCFTA. Section 202(o)(2)(A) authorizes the President to proclaim, subject to the consultation and layover requirements of section 103(a) of the USCFTA Act, modifications to such previously proclaimed rules of origin.

9. The United States and Chile have agreed to modify certain rules of origin and to add certain other rules of origin in the USCFTA. I have determined that further modification of the USCFTA rules of origin set forth in Proclamation 7746, and subsequently modified, is therefore necessary.

10. The consultation and layover requirements of section 103(a) of the USCFTA Act were satisfied as of July 10, 2010.

11. On April 15, 1994, the United States entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations (the ''Uruguay Round Agreements''). In section 101(a) of the Uruguay Round Agreements Act (the ''URAA'') (19 U.S.C. 3511(a)), the Congress approved the Uruguay Round Agreements listed in section 101(d) of that Act, including the Agreement on Agriculture in section 101(d)(2). To implement section 4.2 of the Agreement on Agriculture, section 401(b)(2) of the URAA amended section 103B of the Agricultural Act of 1949 (7 U.S.C. 1444–2) by converting the special import quotas on cotton provided for under section 103B to tariff-rate quotas.

12. Proclamation 6301 of June 7, 1991, and Proclamation 6948 of October 29, 1996, modified U.S. note 6 to subchapter III of chapter 99 of the HTS and created tariff lines in the HTS for reporting entries under a special import quota for upland cotton. Note 6 sets out the conditions under which a special import quota for upland cotton takes effect.

13. Section 1207(a)(2)(B) of the Food Conservation and Energy Act of 2008 (7 U.S.C. 8737(a)(2)(B)) changed the conditions under which a special import quota for upland cotton takes effect. U.S. note 6 to subchapter III of chapter 99 needs to be modified to reflect those changes.

14. Section 604 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts, affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

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 of America, including but not limited to section 1206 of the 1988 Act, section 202 of the USCFTA Act, and section 604 of the Trade Act, do proclaim that:

(1) In order to modify the HTS to promote the uniform application of the Convention and to alleviate unnecessary administrative burdens, the HTS is modified as set forth in Annex I to this proclamation.

(2) The modifications to the HTS set forth in Annex I to this proclamation shall be effective with respect to goods that are entered, or withdrawn from warehouse for consumption, on or after the later of September 1, 2011, or the thirtieth day after publication of this proclamation in the Federal Register.

(3) In order to modify the rules of origin under the USCFTA, general note 26 to the HTS is modified as provided in Annex II to this proclamation.

(4) The modifications made by Annex II to this proclamation shall be effective with respect to goods of Chile under the terms of general note 26 to the HTS that are entered, or withdrawn from warehouse for consumption, on or after November 1, 2011.

(5) In order to reflect the modified requirements under which a special import quota for upland cotton takes effect, the HTS is modified as set forth in Annex III to this proclamation.

(6) The modifications made by Annex III to this proclamation, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after June 18, 2008.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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.

Billing code 3295–F2–P

ANNEX I
TO MODIFY THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A: Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the later of September 1, 2011 or the thirtieth day after the date of publication of this proclamation in the Federal Register, the Harmonized Tariff Schedule of the United States is modified as set forth herein, with the material inserted into the columns labeled "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

1. The following new additional U.S. note to chapter 64 is inserted in numerical sequence:

"5. For the purposes of determining the constituent material of the outer sole pursuant to note 4(b) of this chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength."

2. Subheading 6402.99.40 is superseded by the following:

[6402	Other footwear with outer soles or rubber or plastics:]			
	[Other footwear:]			
[6402.99	Other:]			
	[Other:]			
	[Other:]			
	"Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.20 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper:			
6402.99.41	Having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R,SG)	35%
6402.99.49	Other	37.5%	Free (AU,BH,CA,CL, E,IL,J+,JO,MA,MX, OM,P,PE,R) 7.5% (SG)	66%"

3. Subheading 6402.99.60 is superseded by the following:

[6402	Other footwear with outer soles or rubber or plastics:]			
	[Other footwear:]			
[6402.99	Other:]			
	[Other:]			
	[Other:]			
	[Other:]			
	"Valued not over $3/pair:			
6402.99.61	Having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R,SG)	35%
6402.99.69	Other	48%	Free (AU,BH,CA,CL, E,IL,J+,JO,MA,MX, OM,P,PE,R) 9.6% (SG)	84%"

4. Subheading 6402.99.70 is superseded by the following:

[6402	Other footwear with outer soles of rubber or plastics:]			
	[Other footwear:]			
[6402.99	Other:]			
	[Other:]			
	[Other:]			
	[Other:]			
	"Valued over $3 but not over $6.50/pair:			
6402.99.71	Having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R,SG)	35%
6402.99.79	Other	90¢/pr. + 37.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 18¢/pr. + 7.5% (SG)	84%"

Conforming change: Chapter rule 1 for chapter 64 in general note 29(n) is modified by deleting "6402.99.70" and by inserting in lieu thereof "6402.99.79".

5. Subheading 6404.11.40 is superseded by the following:

[6404	Footwear with outer soles...:]			
	[Footwear with outer soles of rubber or plastics:]			
[6404.11	Sports footwear...:]			
	[Other:]			
	[Valued not over $3/pair:]			
	" Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:			
6404.11.41	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 2.4% (MA)	35%
6404.11.49	Other	37.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 7.5% (SG)	66%"

6. Subheading 6404.11.50 is superseded by the following:

[6404	Footwear with outer soles...:]			
	[Footwear with outer soles of rubber or plastics:]			
[6404.11	Sports footwear...:]			
	[Other:]			
	[Valued not over $3/pair:]			
	"Other:			
6404.11.51	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the			

	terms of additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 2.4% (MA)	35%
6404.11.59	Other	48%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 9.6% (SG)	84%"

7. Subheading 6404.11.60 is superseded by the following:

[6404	Footwear with outer soles...:]			
	[Footwear with outer soles ...:]			
[6404.11	Sports footwear...:]			
	[Other:]			
	[Valued over $3 but...:]			
	"Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:			
6404.11.61	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 2.4% (MA)	35%
6404.11.69	Other	37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 7.5% (SG)	66%"

8. Subheading 6404.11.70 is superseded by the following:

[6404	Footwear with outer soles...:]			
	[Footwear with outer soles...:]			
[6404.11	Sports footwear...:]			

	[Other:]			
	[Valued over $3 but...:]			
	"Other:			
6404.11.71	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 2.4% (MA)	35%
6404.11.75	With uppers of textile materials other than vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA ,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 4.1% (MA)	35%
6404.11.79	Other	90¢/pr. + 37.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX OM,P,PE,R) 18¢/pr. + 7.5% (SG)	$1.56/pr. + 66%"

9. Subheading 6404.11.80 is superseded by the following:

[6404	Footwear with outer soles...:]			
	[Footwear with outer soles of rubber or plastics:]			
[6404.11	Sports footwear...:]			
	[Other:]			
	"Valued over $6.50 but not over $12/pair:			
6404.11.81	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG)	35%

			2.4% (MA)	
6404.11.85	With uppers of textile material other than vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 4.1% (MA)	35%
6404.11.89	Other	90¢/pr. + 20%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 18¢/pr. + 4% (SG)	$1.56/pr. + 35%"

10. Subheading 6404.19.35 is superseded by the following:

[6404	Footwear with outer soles...:]			
	[Footwear with outer soles of rubber or plastics:]			
[6404.19	Other:]			
	[Footwear with open toes or heels...:]			
	"Other:			
6404.19.36	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 2.4% (MA)	35%
6404.19.37	With uppers of textile materials other than vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX,OM, P,PE,R,SG) 4.1% (MA)	35%

6404.19.39	Other	37.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 7.5% (SG)	66%"

11. Subheadings 6404.19.40 through 6404.19.80 are superseded by the following:

[6404	Footwear with outer soles...:] [Footwear with outer soles of rubber or plastics:]			
[6404.19	Other:] [Other:] [Valued not over $3/pair:] "Having soles (or midsoles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any midsoles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper upper other than at the toe or heel:			
6404.19.42	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 2.4% (MA)	35%

[6404	Footwear with outer soles...:]			
	[Footwear ...:]			
[6404.19	Other:]			
	[Other:]			
	[Valued not over $3/pair:]			
	[Having soles ...:]			
6404.19.47	With uppers of textile material other than vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter ...	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 4.1% (MA)	35%
6404.19.49	Other	37.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 7.5% (SG)	66%
	Other:			
6404.19.52	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX,OM, P,PE,R,SG) 2.4% (MA)	35%
6404.19.57	With uppers of textile material other than vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter ...	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX,OM, P,PE,R,SG) 4.1% (MA)	35%
6404.19.59	Other	48%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 9.6% (SG)	84%

[6404	Footwear with outer soles...:]			
	[Footwear with...:]			
[6404.19	Other:]			
	[Other:]			
	[Valued over $3 but not over $6.50/pair:]			
	Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:			
6404.19.61	With uppers of textile material other than vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX,OM, P,PE,R,SG) 4.1% (MA)	35%
6404.19.69	Other	37.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 7.5% (SG)	66%
	Other:			
6404.19.72	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter . . .	7.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX,OM, P,PE,R,SG) 2.4% (MA)	35%
[6404	Footwear with outer soles...:]			
	[Footwear with...:]			
[6404.19	Other:]			
	[Other:]			
	[Valued over $3 but not over $6.50/pair:]			
	[Other:]			
6404.19.77	With uppers of textile			

	material other than vegetable fibers and and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX,OM, P,PE,R,SG) 4.1% (MA)	35%
6404.19.79	Other	90¢/pr. + 37.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 18¢/pr. + 7.5% (SG)	$1.56/pr. + 66%
	Valued over $6.50 but not over $12/pair:			
6404.19.82	With uppers of vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	7.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 2.4% (MA)	35%
6404.19.87	With uppers of textile material other than vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this chapter	12.5%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MX, OM,P,PE,R,SG) 4.1% (MA)	35%
6404.19.89	Other	90¢/pr. + 20%	Free (AU,BH,CA,CL, D,E,IL,J+,JO,MA,MX, OM,P,PE,R) 18¢/pr. + 4% (SG)	$1.58/pr. + 35%"

Section B. Effective with respect to goods of Singapore, under the terms of general note 25 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after the later of September 1, 2011 or the thirtieth day after the date of publication of this proclamation in the Federal Register, and on January 1 of each of the successive years, for each of the enumerated subheadings in the following table, the Rates of Duty 1 Special subcolumn in the HTS is modified (i) by inserting in such

subcolumn for each subheading the rate of duty specified for such subheading in the column for 2011 followed by the symbol "SG" in parentheses, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "SG" in parentheses are deleted and the rates of duty for such dated column are inserted in such subheadings in lieu thereof.

HTS Subheading	Effective date of this proclamation-Dec. 31, 2011	2012	2013
6402.99.49	7.50%	3.70%	Free
6402.99.69	9.6%	4.8%	Free
6402.99.79	18 cents/pr. + 7.5%	9 cents/pr. + 3.7%	Free
6404.11.49	7.5%	3.7%	Free
6404.11.59	9.6%	4.8%	Free
6404.11.69	7.5%	3.7%	Free
6404.11.79	18 cents/pr. + 7.5%	9 cents/pr. + 3.7%	Free
6404.11.89	18 cents/pr. + 4%	9 cents/pr. + 2%	Free
6404.19.39	7.5%	3.7%	Free
6404.19.49	7.5%	3.7%	Free
6404.19.59	9.6%	4.8%	Free
6404.19.69	7.5%	3.7%	Free
6404.19.79	18 cents/pr. + 7.5%	9 cents/pr. + 3.7%	Free
6404.19.89	18 cents/pr. + 4%	9 cents/pr. + 2%	Free

Section C. Effective with respect to goods of Morocco, under the terms of general note 27 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after the later of September 1, 2011 or the thirtieth day after the date of publication of this proclamation in the Federal Register, and on January 1 of each of the successive years, for each of the enumerated subheadings in the following table, the Rates of Duty 1 Special subcolumn in the HTS is modified (i) by inserting in such subcolumn for each subheading the rate of duty specified for such subheading in the column for 2011 followed by the symbol "MA" in parentheses, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "MA" in parentheses are deleted and the rates of duty for such dated column are inserted in such subheadings in lieu thereof.

HTS Subheading	Effective date of this proclamation-Dec . 31, 2011	R2012	R2013	R2014
6404.11.41	2.4%	1.6%	0.8%	Free
6404.11.51	2.4%	1.6%	0.8%	Free
6404.11.61	2.4%	1.6%	0.8%	Free
6404.11.71	2.4%	1.6%	0.8%	Free
6404.11.75	4.1%	2.7%	1.3%	Free
6404.11.81	2.4%	1.6%	0.8%	Free
6404.11.85	4.1%	2.7%	1.3%	Free
6404.19.36	2.4%	1.6%	0.8%	Free
6404.19.37	4.1%	2.7%	1.3%	Free
6404.19.42	2.4%	1.6%	0.8%	Free
6404.19.47	4.1%	2.7%	1.3%	Free
6404.19.52	2.4%	1.6%	0.8%	Free
6404.19.57	4.1%	2.7%	1.3%	Free
6404.19.61	4.1%	2.7%	1.3%	Free
6404.19.72	2.4%	1.6%	0.8%	Free
6404.19.77	4.1%	2.7%	1.3%	Free
6404.19.82	2.4%	1.6%	0.8%	Free
6404.19.87	4.1%	2.7%	1.3%	Free

ANNEX II
TO MODIFY THE RULES OF ORIGIN
FOR THE UNITED STATES-CHILE FREE TRADE AGREEMENT

Effective with respect to goods of Chile, under the terms of general note 26 to the Harmonized Tariff Schedule (HTS), that are entered, or withdrawn from warehouse for consumption, on or after November 1, 2011, general note 26 to the HTS is hereby modified as follows:

A. Subdivision (m)(vi) is deleted, and the following new provisions are inserted in lieu thereof:

"(vi) (A) For purposes of applying this note to goods of chapters 28 through 38, inclusive, the following provisions confer origin to a good of any heading or subheading in such chapters, except as otherwise specified in this subdivision.

(B) Notwithstanding subdivision (vi)(A), a good of chapters 28 through 38 is an originating good if it meets the applicable change in tariff classification or satisfies the applicable value content requirement specified in subdivision (n) of this note.

(C) A good of chapters 28 through 38, except goods of heading 3823, that results from a chemical reaction in the territory of Chile or of the United States, or both, shall be treated as an originating good. For purposes of such chapters, a "chemical reaction" is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a good is originating:

(1) dissolution in water or in another solvent;

(2) the elimination of solvents, including solvent water; or

(3) the addition or elimination of water of crystallization.

(D) A good of chapters 28 through 38 that is subject to purification shall be treated as an originating good provided that the purification occurs in the territory of Chile or of the United States, or both, and results in the following:

(1) the elimination of 80 percent of the impurities; or

(2) the reduction or elimination of impurities resulting in a good suitable:

(I) as a pharmaceutical, medicinal, cosmetic, veterinary, or food grade substance;

(II) as a chemical product or reagent for analytical, diagnostic, or laboratory uses;

(III) as an element or component for use in micro-elements;

(IV) for specialized optical uses;

(V) for non-toxic uses for health and safety;

(VI) for biotechnical use;

(VII) as a carrier used in a separation process; or

(VIII) for nuclear grade uses.

(E) A good of chapters 30, 31 or 33 through 38, except for heading 3808, shall be treated as an originating good if the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications, resulting in the production of a good having physical or chemical characteristics that are relevant to the purposes or uses of the good and are different from the input materials, occurs in the territory of Chile or of the United States, or both.

(F) A good of chapters 30, 31 or 33 shall be treated as an originating good if the deliberate and controlled modification in particle size of the good, including micronizing by dissolving a polymer and subsequent precipitation, other than by merely crushing or pressing, resulting in a good having a defined particle size, defined particle size distribution, or defined surface area, which is relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials, occurs in the territory of Chile or of the United States, or both.

(G) A good of chapters 28 through 38 shall be treated as an originating good if the production of standards materials occurs in the territory of Chile or of the United States, or both. For the purposes of this note, "standards materials" (including standard solutions) are preparations suitable for analytical, calibrating or referencing uses, having precise degrees of purity or proportions that are certified by the manufacturer.

(H) A good of chapters 28 through 38 shall be treated as an originating good if the isolation or separation of isomers from mixtures of isomers occurs in the territory of Chile or of the United States, or both.

(I) A good that undergoes a change from one classification to another in the territory of Chile or of the United States, or both, as a result of the separation of one or more materials from a man-made mixture shall not be treated as an originating good unless the isolated material underwent a chemical reaction in the territory of Chile or of the United States, or both."

B. Subdivision (n) is modified as set forth below:

(1). Tariff classification rule (TCR) 1 for chapter 7 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 0701.10 through 0712.39 from any other chapter.

2. (A) A change to marjoram, savory or cilantro, crushed or ground, of subheading 0712.90 from marjoram, savory or cilantro, neither crushed nor ground, of subheading 0712.90 or any other chapter; or

(B) A change to any other good of subheading 0712.90 from any other chapter.

3. A change to headings 0713 through 0714 from any other chapter."

(2). TCR 1 for chapter 9 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 0901.11 through 0901.12 from any other chapter.

1A. A change to subheading 0901.21 from any other subheading.

1B. A change to subheading 0901.22 from any other subheading, except from subheading 0901.21.

1C. A change to subheading 0901.90 from any other chapter."

(3). TCR 3 for chapter 9 is deleted and the following new TCRs are inserted in lieu thereof:

"3. A change to heading 0903 from any other chapter.

4. (A) A change to crushed, ground, or powdered spices put up for retail sale of subheadings 0904.11 through 0910.99 from spices that are not crushed, ground, or powdered of subheadings 0904.11 through 0910.99, or from any other subheading; or

(B) A change to mixtures of spices or any good of subheadings 0904.11 through 0910.99 other than crushed, ground, or powdered spices put up for retail sale from any other subheading."

(4). TCR 1 for chapter 12 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to headings 1201 through 1207 from any other chapter.

2. A change to subheadings 1208.10 through 1209.30 from any other chapter.

3. (A) A change to celery seeds, crushed or ground, of subheading 1209.91 from celery seeds, neither crushed nor ground, of subheading 1209.91 or any other chapter; or

(B) A change to any other good of subheading 1209.91 from any other chapter.

4. A change to subheadings 1209.99 through 1211.40 from any other chapter.

5. (A) A change to basil, rosemary or sage, crushed or ground, of subheading 1211.90 from basil, rosemary or sage, neither crushed nor ground, of subheading 1211.90 or any other chapter; or

(B) A change to any other good of subheading 1211.90 from any other chapter.

6. A change to headings 1212 through 1214 from any other chapter."

(5). TCR 1 for chapter 18 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to headings 1801 through 1802 from any other chapter.

1A. A change to headings 1803 through 1805 from any other heading."

(6). TCR 4 for chapter 21 is deleted and the following new TCRs are inserted in lieu thereof:

"4. A change to subheading 2103.30 from any other chapter.

4A. A change to subheading 2103.90 from any other subheading."

(7). Chapter rule 1 for each of chapters 27 through 38 is deleted.

(8). TCRs 7 and 8 for chapter 40 are deleted and the following new TCR 7 is inserted in lieu thereof:

"7. A change to headings 4005 through 4017 from any other heading, including another heading within that group."

(9). TCR 1 for chapter 71 is modified by deleting the phrase ", except from heading 0307".

(10). TCRs 34 through 37 for chapter 84 are deleted and the following new TCR is inserted in lieu thereof:

"34. A change to subheadings 8415.10 through 8415.83 from any other subheading, including another subheading within that group."

(11). TCR 45 for chapter 84 is deleted and the following new TCRs are inserted in lieu thereof:

"45. A change to subheading 8419.11 from any other subheading.

45A. (A) A change to subheading 8419.19 from any other heading; or

(B) A change to subheading 8419.19 from any other subheading, provided that there is a regional value content of not less than:

(1) 35 percent when the build-up method is used, or

(2) 45 percent when the build-down method is used.

45B. A change to subheadings 8419.20 through 8419.89 from any other subheading, including another subheading within that group."

(12.) TCR 47 for chapter 84 is deleted and the following new TCR is inserted in lieu thereof:

"47. A change to subheading 8420.10 from any other subheading."

(13). TCR 49 for chapter 84 is deleted and the following new TCR is inserted in lieu thereof:

"49. A change to subheadings 8421.11 through 8421.39 from any other subheading."

(14). TCRs 56 through 60 for chapter 84 are deleted and the following new TCR is inserted in lieu thereof:

"56. A change to subheadings 8424.10 through 8430.69 from any other subheading, including another subheading within that group."

(15). TCRs 67 through 71 for chapter 84 are deleted and the following new TCR is inserted in lieu thereof:

"67. A change to subheadings 8434.10 through 8435.90 from any other subheading, including another subheading within that group."

(16). TCRs 80 through 84 for chapter 84 are deleted and the following new TCR is inserted in lieu thereof:

"80. A change to subheadings 8439.10 through 8440.90 from any other subheading, including another subheading within that group."

(17). TCR 99 for chapter 84 is deleted and the following new TCR is inserted in lieu thereof:

"99. A change to subheadings 8450.11 through 8450.20 from any other subheading, including another subheading within that group."

(18). TCR 101 for chapter 84 is deleted and the following new TCR is inserted in lieu thereof:

"101. A change to subheadings 8451.10 through 8451.80 from any other subheading, including another subheading within that group."

(19). TCRs 111 and 112 for chapter 84 are deleted and the following new TCR is inserted in lieu thereof:

"111. A change to subheadings 8455.10 through 8455.90 from any other subheading, including another subheading within that group."

(20). TCR 121 for chapter 84 is deleted and the following new TCR is inserted in lieu thereof:

"121. A change to heading 8469 from any other heading."

(21). TCR 127 for chapter 84 is deleted and the following new TCR is inserted in lieu thereof:

"127. (A) A change to subheadings 8473.10 through 8473.50 from any other subheading, including another subheading within that group; or

(B) No change in tariff classification to a good of such subheadings is required, provided that there is a regional value content of not less than:

(1) 35 percent when the build-up method is used, or

(2) 45 percent when the build-down method is used."

(22). TCRs 78 through 86 for chapter 85 are deleted and the following new TCR is inserted in lieu thereof:

"78. A change to subheadings 8539.10 through 8539.49 from any other subheading, including another subheading within that group."

(23). TCRs 61 through 61H for chapter 90 are deleted and the following new TCR is inserted in lieu thereof:

"61. A change to subheadings 9030.10 through 9030.89 from any other subheading, including another subheading within that group."

ANNEX III
TO MODIFY THE UPLAND COTTON SPECIAL IMPORT QUOTA

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after June 18, 2008, U.S. note 6 to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified as provided herein:

1. Subdivision (a)(i) of such note 6 is modified to read as follows:

> "(i) Whenever the Secretary of Agriculture determines and announces that for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) one-and-three-thirty-seconds cotton, delivered to a definable and significant international market, as determined by the Secretary, exceeds the prevailing world market price, there shall immediately be in effect a special import quota. The quota shall be equal to 1 week's consumption of cotton by domestic mills at the seasonally adjusted average rate of the most recent 3 months for which data are available. The aggregate quantity of cotton entered into the United States during any marketing year under the special import quota established under this subdivision may not exceed the equivalent of 10 week's consumption of upland cotton by domestic mills at the seasonally adjusted average rate of the 3 months immediately preceding the first special import quota established in any marketing year."

2. Subdivision (b)(i) of such note 6 is modified by inserting the following final sentence:

> "For purposes of this subdivision, a Limited Global Cotton Import Quota means a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota contained in chapter 52 of the tariff schedule."

[FR Doc. 2011–28727
Filed 11–2–11; 11:15 am]
Billing code 7020–02–C

Presidential Documents

Executive Order 13588 of October 31, 2011

Reducing Prescription Drug Shortages

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Shortages of pharmaceutical drugs pose a serious and growing threat to public health. While a very small number of drugs in the United States experience a shortage in any given year, the number of prescription drug shortages in the United States nearly tripled between 2005 and 2010, and shortages are becoming more severe as well as more frequent. The affected medicines include cancer treatments, anesthesia drugs, and other drugs that are critical to the treatment and prevention of serious diseases and life-threatening conditions.

For example, over approximately the last 5 years, data indicates that the use of sterile injectable cancer treatments has increased by about 20 percent, without a corresponding increase in production capacity. While manufacturers are currently in the process of expanding capacity, it may be several years before production capacity has been significantly increased. Interruptions in the supplies of these drugs endanger patient safety and burden doctors, hospitals, pharmacists, and patients. They also increase health care costs, particularly because some participants in the market may use shortages as opportunities to hoard scarce drugs or charge exorbitant prices.

The Food and Drug Administration (FDA) in the Department of Health and Human Services has been working diligently to address this problem through its existing regulatory framework. While the root problems and many of their solutions are outside of the FDA's control, the agency has worked cooperatively with manufacturers to prevent or mitigate shortages by expediting review of certain regulatory submissions and adopting a flexible approach to drug manufacturing and importation regulations where appropriate. As a result, the FDA prevented 137 drug shortages in 2010 and 2011. Despite these successes, however, the problem of drug shortages has continued to grow.

Many different factors contribute to drug shortages, and solving this critical public health problem will require a multifaceted approach. An important factor in many of the recent shortages appears to be an increase in demand that exceeds current manufacturing capacity. While manufacturers are in the process of expanding capacity, one important step is ensuring that the FDA and the public receive adequate advance notice of shortages whenever possible. The FDA cannot begin to work with manufacturers or use the other tools at its disposal until it knows there is a potential problem. Similarly, early disclosure of a shortage can help hospitals, doctors, and patients make alternative arrangements before a shortage becomes a crisis. However, drug manufacturers have not consistently provided the FDA with adequate notice of potential shortages.

As part of my Administration's broader effort to work with manufacturers, health care providers, and other stakeholders to prevent drug shortages, this order directs the FDA to take steps that will help to prevent and reduce current and future disruptions in the supply of lifesaving medicines.

Sec. 2. *Broader Reporting of Manufacturing Discontinuances.* To the extent permitted by law, the FDA shall use all appropriate administrative tools, including its authority to interpret and administer the reporting requirements in 21 U.S.C. 356c, to require drug manufacturers to provide adequate advance

notice of manufacturing discontinuances that could lead to shortages of drugs that are life-supporting or life-sustaining, or that prevent debilitating disease.

Sec. 3. *Expedited Regulatory Review.* To the extent practicable, and consistent with its statutory responsibility to ensure the safety and effectiveness of the drug supply, the FDA shall take steps to expand its current efforts to expedite its regulatory reviews, including reviews of new drug suppliers, manufacturing sites, and manufacturing changes, whenever it determines that expedited review would help to avoid or mitigate existing or potential drug shortages. In prioritizing and allocating its limited resources, the FDA should consider both the severity of the shortage and the importance of the affected drug to public health.

Sec. 4. *Review of Certain Behaviors by Market Participants.* The FDA shall communicate to the Department of Justice (DOJ) any findings that shortages have led market participants to stockpile the affected drugs or sell them at exorbitant prices. The DOJ shall then determine whether these activities are consistent with applicable law. Based on its determination, DOJ, in coordination with other State and Federal regulatory agencies as appropriate, should undertake whatever enforcement actions, if any, it deems appropriate.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

THE WHITE HOUSE,
October 31, 2011.

[FR Doc. 2011–28728
Filed 11–2–11; 11:15 am]
Billing code 3295–F2–P

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Thursday, November 3, 2011

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H.R. 2832/P.L. 112–40

To extend the Generalized System of Preferences, and for other purposes. (Oct. 21, 2011; 125 Stat. 401)

H.R. 3080/P.L. 112–41

United States-Korea Free Trade Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 428)

H.R. 3078/P.L. 112–42

United States-Colombia Trade Promotion Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 462)

H.R. 3079/P.L. 112–43

United States-Panama Trade Promotion Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 497)

H.R. 2944/P.L. 112–44

United States Parole Commission Extension Act of 2011 (Oct. 21, 2011; 125 Stat. 532)

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